PHILIPPINE LEGAL PHILOSOPHY*

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I. INTRODUCTION

A. *Importance of the Study.*—The legal system of a country is said to tell vividly in its own peculiar way the life story of a people. In the same manner, the country's legal philosophy lucidly mirrors the national soul. The reason for this may be gleaned from what one law professor has written.

> Those who would tell of life as mankind lives it must give an account of law somewhere in the story, for a prime function of law is telling men how to live. In this, it is a good deal like custom and religion, which regulate the business of living by means of more or less dogmatic commands in the interest of certain ends thought to be desirable. In nature and effect, the prescriptions in our codes and statutes are not to be distinguished from the ordinances of the holy books or of tribal feeling, or from the exhortations of priests or moral philosophers. Their subject matter is human conduct and their concern is its control through the technique of dogma. Indeed, the distinction between law on the one hand and custom and morals on the other, is quite modern. Ancient law, compounded of tribal customs and sacred commandments, proceeded from a lawgiver who was at once the conserver of ancient traditions and the spokesman of the gods.[1]

An elder statesman and advocate has spoken on this subject thus —

> I subscribe to the theory that the juristic thought of a country invariably embodies the passing and shifting problems of its generations, and the law, therefore, becomes the repository of a people's growth and fulfillment — to the end that the legal aphorisms and doctrines found useful today, though they may be discarded tomorrow, may nevertheless be signposts along the legal highway, giving us a sense of direction and incentive in the solution of our social, political and economic problems.[2]

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The extensive use of direct quotes was intentional. The quotes are intended to reflect, with no possible risk of distortion from the writer, the ideas of those quoted.

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[1] Fernandez, Perfecto V., *Sixty Years of Philippine Law*, 35 PHIL. L.J. 1389 (1960).

[2] Paredes, Quintin. Speech on the occasion of the Commencement Exercises of the Francisco Law School, 15 L.J. 146 (1950).

Crude though it was, the attempt of the Filipinos at legal ordering started rather early.[3] This development suffered a substantial modification, if not a serious setback, with the coming of foreign domination in the 16th century. For more than three centuries, the Filipinos were not free to fashion their own legal thinking. Such phenomenon resulted in the emergence of a legal system which is a hybrid of Roman Civil Law and Anglo-American Common Law.[4] Ironically, the legal system evolved was, as it still is, neither civil nor common law. Much less is it typically Filipino. The situation has not fundamentally changed even after more than a decade and a half of political independence.[5]

It is refreshing to note, however, that even during the long period of stagnation, there were voices raised by some Filipino thinkers calling for a revision of the country's legal concepts. Inaudible those voices might have seemed at the time, the clearer and louder they resound throughout the length and breadth of the land with the passing of the years.[6]

Recent years have witnessed a healthy realization of an imperative urgency to revamp the country's legal system along the line of the people's customs, traditions and temperament, and to make it responsive to the nation's needs.[7] To make this change possible as well as effective, there is the necessity to effect a comparable turn in the legal thinking of the people. A youthful and outstanding leader has stressed that —

> . . . If we are to live and flourish an independent nation, we've got to find the roots, the firm roots, of our cultural heritage. The question it seems, is what is to be included and what to be excluded from this heritage.[8]

Behind all this need for reform lies the precarious, if not altogether confused, politico-socio-economic situation which has plagued the country since its political emancipation in 1946, to say the least.[9]

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[3] As early as the 15th century, the Philippines could boast of two legal codes, namely, the Code of Sumakwel or Maragtas (1250 A.D.) and the Code of Kalantiao (1433 A.D.). Also (ORENDAIN, TEN DATUS OF MADIAAS 88-89, 139-142 1963).

[4] Balbastro, Arturo E., *The Legal Philosophy of Jose P. Laurel,* 37 Phil. L.J. 728-729 (1962).

[5] "Now, rather well-advanced in years and about to complete a half century in the public service of our country, rendered in all departments of government, legislative, executive, judicial, and therefore continuously exposed during the past five decades to the searing issues of national and international life that those decades have seen, I may say that I find no necessity to revise or modify my faith in the paramount need of national integration under the inspiration and guidance of a vigorous nationalism such as Rizal, Mabini and Bonifacio bequeathed to our people as a priceless legacy." — LAUREL, OUR ECONOMY — WHAT CAN BE DONE 88-89 (1956). (1956)

[6] See *supra* note 4 at 728.

[7] *Id.* at 729.

[8] MANGLAPUS, FREEDOM, NATIONHOOD AND CULTURE 2-3 (1959).

[9] LAUREL, OUR ECONOMY — WHAT CAN BE DONE xi (1956).

With the current resurgence of nationalistic movement calculated to make secure to the Filipinos the nation's patrimony[10] should go hand in hand a fundamental change in the people's legal thinking. As tersely put by Dean Vicente Abad Santos, now that we are substantially a politically independent nation and are at present striving toward economic emancipation, it seems but proper that we should fashion our own legal philosophy and nationalize our legal outlook in accordance with our culture.[11] In this connection, Dean Abad Santos made the following observation:[12]

> A cursory glance at the diet offered to Filipino law students reveals that it is sadly deficient in respect of the wisdom of illustrious Filipino lawyers. True, we have courses in legal philosophy offered in both undergraduate and graduate levels. But the philosophy that is taught and learned is not indigenous but alien. It is a sad commentary on our legal education that our students can in some instances readily expound the views of alien writers but they are at a loss in providing themselves with native props. This is not to say that we should denigrate foreign legal philosophy. It has its utility. But if we are to be true to the spirit of datus Sumakwel and Kalantiao, then we must evolve something that is peculiarly ours.

Ultimately, the change should bring about a transformation of the Philippine legal system from its present posture which is suitable to a semi-feudal society into one which can adequately provide an effective underpinning for a progressive country's agro-industrial economy.[13] This is aside from having a legal system based on the mores and temperament, and in accordance with the culture and traditions of the Filipinos.

B. *Purpose and Scope.*—A proper and adequate understanding of Philippine legal philosophy, or more accurately Filipino legal thinking, presupposes a familiarity with the principles and concepts underlying it.

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[10] "The topic of the day is a 'Filipino-First' policy, the Filipinization of everything from our national resources to our labor force, from education to religion, from the retail business to the exploration of oil.

"The tide is running full at present. The newspapers are black with headlines about the new reawakening of the national consciousness. In the halls of some institutions resound fervid discourses advocating fantastic measures and are heard endless discussions that generate more heat than light, and political speeches on nationalism that may divert the attention of the people to, or to sidetrack the issue of, graft and corruption in the November elections.'"—Francisco, Vicente J., *Ultra-Nationalism,* 24 L.J. 111 (1959).

[11] Abad Santos Vicente, *Education in Law for Philippine Culture,* Law Register, Vol. V, p. 1 (November, 1959).

[12] *Id.*

[13] "That the economic *status quo* in our country is both a colonial and semi-feudal one and since many of our present social and economic problems are inherent in and inevitable from that dual character of *status quo,* then we need to have fundamental reform in our society and in our economic life if we are to overcome and resolve the problems and dilemmas that have been harassing us all these years." — See *supra note* 9.

Especially at this stage of our national existence and development as a people, when nationalism has been rekindled and is about to flower with its maturity in the land, it is but fitting and proper that attention be focused on the basic ideas underlying our legal system. Although it may be said that we cannot divorce our legal system from foreign influence for the simple reason that it has been largely a product of two leading legal systems of the world, it cannot be doubted that an intimate understanding of the fundamental principles underlying our laws is imperative in order to obtain a proper perspective of our legal institutions.[14] For this purpose, Dean Abad Santos makes the following suggestion:[15]

> This then is my humble suggestion for education in law for Philippine culture: a research on the works and lives of illustrious Filipino lawyers. A study of their views will give breadth to the legal education of the practitioners and judges of tomorrow; more, it will instill in them native wisdom so necessary to our identity as a nation. Their lives — noble, patriotic and characterized by integrity — will serve as worthy examples to those to whom has been entrusted the greatest temporal power, the administration of justice. Their works and lives will be a mirror of our past and a projection of our aspiration.

It is the purpose of this work to help focus attention on the necessity of revising the Filipino legal thinking as well as the country's legal system. To this end a survey is made of the notions on law and justice as expressed and expounded by Filipino thinkers within and without the law profession. Ideas expressed by Filipino thinkers, whether lawyers, jurists or mere laymen, as far as they are pertinent to the subject, are availed of and analyzed in the proper appreciation of their impact upon the trend or development of Philippine law and legal institutions, as well as upon the political, social and economic life of the people as a whole. As Dean Abad Santos has noted —

> The Philippines has its scholarly and learned lawyers. There are not many of them of course but their views in matters legal deserve more than passing consideration. By their views we mean not only those expressed in judicial opinions but more especially given in other forms. Unfortunately, and this explains partly the deficiency we have noted above, their writings (except possibly in the case of Dr. Jose P. Laurel) have not been collected in a convenient and systematized form. Parenthetically, even the collected writings of Dr. Jose Laurel have yet to be published.[16]

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[14] ". . . This is intended to give him an understanding and insight of the intellectual foundations of law as a social phenomenon and force in human society. It is believed that such insight will promote his understanding of any concrete law with which he will be confronted." — Sinco, Vicente G., *Objectives of the New Curriculum of the College of Law, University of the Philippines,* 29 PHIL. L.J. 307, 309 (1954).

[15] See *supra* note 11.

[16] *Id.*

Of course, this does not preclude a cursory inquiry into the subject of whether there exists as a system a particular legal philosophy in this country. Philosophy is generally defined as a body of principles or general concepts underlying a given branch of learning or major discipline.[17] From this, it may be deduced that legal philosophy refers to the body of principles or concepts underlying law as a branch of knowledge or discipline.[18] In short, the subject of this work may be said to deal with a body of principles or concepts underlying Philippine law as a discipline or branch of learning. One fundamental question to be answered in this regard, however, is whether or not there is such a thing as Philippine legal philosophy. It is one of the primary objectives of this work to find an answer to that question.

II. BRIEF HISTORICAL BACKGROUND

A. *Pre-Spanish Period.*—As early as the 15th century, the Philippines could boast of two legal "codes". These are the Code of Sumakwel or Maragtas (1250 A.D.) and the Code of Kalantiaw (1433 A.D.) which were named after the rulers of Panay who respectively promulgated them. Even if only to get an inkling of the legal thinking at that time, these "codes" deserve consideration.[19]

1. *Code Maragtas.*—Consisting of four parts, the Code Maragtas deals with the social aspect of labor, the offense of robbery and theft, marriage and family relations.[20]

Laziness or idleness was seriously penalized. Since the main source of livelihood at that time was farming or agriculture, an individual caught not devoting himself to this occupation was sold to slavery in order to train him to work on the soil. If later on he was found out to be trained

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[17] WEBSTER'S NEW INTERNATIONAL DICTIONARY 1842 (Second Edition).

[18] "A philosophy of law may be defined as an integral system of legal control in terms of its final cause. It is integral because it is, as a matter of psychological necessity, supposed to exhibit a certain kind of internal consistency and also, as a matter of social necessity, to afford a comfortable margin of predictability. It is a system of legal control because it attempts to realize its mandates and objectives through socially binding measures promulgated by the legal authority. It is conceived in terms of its final cause because it is always taken in relation to the achievement of a predetermined end . . ." — Espinosa, Jose F., *Observations on Justices Holmes' and Cardozo's Philosophy of Law,* (22 PHIL. L.J. 87 (1947)

[19] "There were both oral and written laws in ancient Philippines. The oral laws were the customs and traditions called *ugali,* which were handed down orally from generation to generation. According to Filipino mythology, these oral laws were first given by Lubluban, the great granddaughter of the first man and woman in the world. This made her the legendary lawgiver of the ancient Filipino." — ZAIDE, GREGORIO F., THE PHILIPPINES SINCE PRE-SPANISH TIMES 70 (1949).

[20] MONTECLARO, PEDRO A., MARAGTAS 40-42 (1957). (In Visayan — Hiligaynon dialect)

in and dedicated to farming, he was repurchased from his buyer and set free. However, on his second offense, that is, if he still proved to be lazy after he had been set free, he was banished to the mountains and the wilderness, and ostracized by society.[21]

Theft, in general, and stealing from the farm of others, in particular, were severely punished by the cutting of the fingers of the culprit.[22] The reliance of the people on agriculture at the time can explain this severity on thefts involving agricultural crops.

During the early times when the population was still sparse, a man was allowed to have three wives at a time. However, only those who could afford it were allowed to have many wives and children. The poor were limited to not more than two children. This encouraged the poor to work hard to improve their livelihood for fear that their children in excess of the two allowed by law would be killed and thrown into the river if the parents did not have sufficient means to support the children.[23]

If an unmarried woman became pregnant by a man who abandoned her in order to avoid marriage, and the man could not be located or found, the child was killed for the reason that it would be difficult for the woman to have a child without a father to support it. The woman was also ostracized by her family. The authorities took the responsibility to look for the man who, if caught and would not marry the woman by whom he had a child, was killed first and then the child was killed next, and both the man and the child were buried in the same grave.[24]

Justice was administered by the datu whose position was hereditary. In deciding cases, the *datu* was aided by four elders in the tribe, the latter in their capacity as witnesses to the authority of the former. Offenses which were punishable by hanging, being buried alive, or by drowning in the sea, were robbery, theft, rape, adultery, and concubinage. Killing due to a duel, conducted for the display of bravery and skill in the use of arms, was not punishable. In fact, the victor was praised and was placed in a position to marry a girl of beauty and coming from a respectable family. However, if the killing was attended by treachery, it was made punishable by death.[25]

As a result of all this, the people were respectful of each other, especially the authorities and the elders. They were afraid to rob or steal

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[21] *Id.* at 41.
[22] *Id.*
[23] See *supra* note 20 at 41.
[24] *Id.* at 41-42.
[25] *Id.* at 8.

the property of others and to trespass into another's farm. They were helpful to one another, especially to those who were in need of food. The young men were afraid to dishonor the maidens because of the heavy penalty imposed for such offense. However, those who could afford it were permitted to have two wives. But in this case, the authorities were strict with respect to the qualification of the man. Moreover, there was the rule that the man should treat the wives equally, and that all the wives should live with the man under one roof.[26]

2. *Code of Kalantiaw.*—The Code of Kalantiaw consists of eighteen orders or "sugo". The English translation was made by Dr. Jorge C. Bocobo from the Spanish version which was a copy of the original that belonged to Don Marcelino Orfila of Zaragoza, Spain.[27]

As may be gathered from its provisions, the Code of Kalantiaw deals primarily with certain injunctions against specific acts tending to disturb order and peaceful relations in the community, giving prominence at times to the religious beliefs and the social stratification of the people during the period. In the Province of Aklan which comprises the territory within the jurisdiction of Datu Kalantiaw, there are still traces of the old custom of gathering the elders or the "ponu-an" in the barrios to conduct and promulgate rules and regulations which were announced by a public crier, for the "sakup" to obey.[28] In addition to this, there are still the arrangement of marriage suits and celebrations by the old folks. Respect for the dead, the aged, the women, and the duly constituted authorities, is still noticeable among the inhabitants of the Island of Panay, although the observance of injunctions with respect to certain beliefs and superstitions are no longer in vogue. It can be generally said that the effect of the rather strict provisions of the two codes still predominates in the more conservative communities in the island.[29]

B. *Spanish Period.*—With the control of the government in the hands of the Spanish authorities, the views expressed by the Filipino thinkers, if they were expressed at all, during the period did not find much outlet in public affairs. This must be the natural consequence of an abnormal relationship between the conqueror and the conquered as Dr. Jose Rizal himself observed.

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[26] *Id.* at 5-6.

[27] ALBA, DIGNO, PAGING DATU KALANTIAW IN THE NEW PROVINCE OF AKLAN 7 (1956).

[28] *Id.* at 15.

[29] "The ancient Filipino laws may appear barbaric in severity of their penalties, but compared with the cruel laws of Draco in ancient Hellas and the severe penal laws of the other ancient European nations, they were really quite humane and fair." — ZAIDE, GREGORIO F., THE PHILIPPINES SINCE PRE-SPANISH TIMES 71 (1949).

> The existence of a foreign body within another endowed with strength and activity is contrary to all natural and ethical laws. Science teaches us that it is either assimilated, destroys the organism, is eliminated or becomes encysted.[30]

Complaining against the suppression of the Filipino thought and freedom at the time, Dr. Rizal wrote:[31]

> No, the valves must not be closed; the human conscience, the people's cry, must not be stifled. Air is a very weak substance, very compressible, yet still it expands and explodes when compressed too much. The laws that govern the material world are the same in the moral and political world. And we say this in loyalty to the Spanish government; we say what we think even though many be offended; we wish to be loyal to the mother country and its exalted rulers.

As a felt need of the time, Dr. Rizal saw the desirability of the expression of the Filipino thought and feeling. To this end, he advocated the Philippine representation in the Spanish legislative body.

> And so long as it is not asserted that the Spanish parliament is an assemblage of Adonises, Autinouses, pretty boys, and other like paragons; so long as the purpose of resorting thither is to legislate and not to philosophize or to wander through imaginary spheres, we maintain that the government ought not to pause at these objections. Law has no skin nor reason nostrils.
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> So we see no serious reason why the Philippines may not have representatives. By their institution many malcontents would be silenced, and instead of blaming its troubles upon the government, as now happens, the country would bear them better, for it could at least complain and with its sons among its legislators would in a way become responsible for their actions.[32]

It may be said that the ideas that were born of Filipino minds at the time were held in a suspended state until such propitious moment when reforms could be had and opportunity for expression presented itself. Undoubtedly, the writings of Rizal and other Filipino reformists are saturated with fertile ideas which could have given some bases for legal development during their lifetime. Unfortunately, these ideas had to remain dormant for years.

C. *American Period.*—The capture of the Spanish Fleet by Commodore Dewey in the famous battle of Manila Bay ushered in the Amer-

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[30] RIZAL'S POLITICAL WRITINGS 149 (Craig, 1933).
1933).

[31] RIZAL'S POLITICAL WRITINGS 267 (Craig, 1933).

[32] See *supra* note 30 at 142.

ican occupation of the Philippines. With the downfall of the Spanish colonial power and with the establishment of the American regime, a new era came to dawn in the islands.

> The coming of the Americans marked a new life in the history of our jurisprudence. Already, the times were characterized with many problems in the social, economic, and political life of the people. Spanish influence was still fresh, and the inertia of Spanish jurisprudence was still a factor, as it still is, in the legal growth of the new era. The problems confronting the newly acquired territory were peculiar and novel, and while the Congress of the United States was studying the advisability of extending into the archipelago the principles and doctrines well established in the American jurisdiction, our own government agencies and instrumentalities were busy reconciling our laws with the then current problems, towards the end of fostering their early and satisfactory solution.[83]

The early part of the American regime witnessed an abrupt transformation from the Spanish colonial administration into the American concept of government. After the establishment of the First and Second Philippine Commissions, the Filipino thinkers focused their attention primarily on the possible systems of government as well as the relation to be adopted with America. The ideas expressed by them slowly found their mark on legislative measures, increasing proportionately with the increase of Filipino participation in the new administration. At any rate, it may be noted that the germ of nationalism had merely lain dormant and slowly but steadily found itself in active form as the American authorities conceded more powers to the Filipinos.

As the legislative and judicial branches of the government came under the control of the Filipinos, their native talent which was first given impetus in the Malolos Constitution again gained momentum. Although the main concern at the time was the attainment of political independence, there were worthwhile developments in legal institutions necessary and suitable for the needs of the time and also useful for the future.

D. *Commonwealth Period.*—As an anti-climax to the political emancipation of the country, the Commonwealth Government was inaugurated in 1935. This has been more properly called the transition period and it could have been fittingly so if it were not for some drastic development in world events, namely, the outbreak of World War II.

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[83] Paredes, Quintin, Speech on the occasion of the Commencement Exercises of the Francisco Law School, 15 L.J. 146 (1950).

After the establishment of the Commonwealth Government, with the Filipinos at the head of the three branches of the government, subject only to certain checks and supervision from the United States authorities, for the first time did the Filipino thinkers find the necessary vehicles for expression of their ideas. It was at this period when a number of doctrines and concepts found adequate expression and came to influence the development of the Philippine legal system.

However, what could have been a continuous and progressive development of the Philippine legal institutions and concepts suffered a major setback when the Japanese Imperial Forces occupied the country for more than three years. Notwithstanding this disadvantage, there were ideas expressed during the period which have provided a link in the continuity of the legal development of the country, that is, from the Filipino point of view.

After the liberation of the Philippines, the Filipinos picked up where they had left off before the holocaust. The period of reconstruction and rehabilitation began. Efforts were also made at continuing the program which constituted a part of the transition preparatory to complete independence from the United States of America.

E. *Period of the Republic.*—In fulfillment of her promise to grant Philippine independence, the United States proclaimed the Philippines a sovereign state on the historic morning of July 4, 1946. With this came new responsibilities for the Filipinos.[34]

The first decade since the proclamation of Philippine independence saw three Presidents with varied temperaments. President Manuel A. Roxas, who had the honor of being the last President of the Commonwealth and the first President of the Republic, dedicated his administration to the task of laying the foundations of the republican institutions and the independent existence of the country. The program of rehabilitation and reconstruction did not becloud the concern for social and economic reforms, and even legal development. When President Elpidio Quirino succeeded President Roxas, after the latter's untimely death, the former continued the program of his predecessor.

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[34] "That no foreign nation or individual can possibly love the Filipinos and the Philippines more than they can love themselves and their own country, and therefore the only ones best qualified to decide on what is, or should be best for the Philippines and the Filipinos are the enlightened and patriotic Filipinos themselves; the corollary of this proposition is the simple truth that 'we cannot depend upon other peoples to solve our own problems; in the end, and when all is said and done, it can only be we ourselves who will have to solve them'. I put these last clauses in quotation marks because I am aware that many other Filipinos, in recent days, and myself, many years before this time, have stated that simple truth in writing or verbally in various speeches." — See *supra* note 9.

A radical change came about with the election of President Ramon Magsaysay. Great emphasis was given to the rights of the common "tao" to the effect that "he who has less in life should have more in law."

Except for the sudden resurgence of nationalism,[35] especially during the administration of President Carlos P. Garcia, the second decade of the Republic has been merely a continuation of the basic programs of the previous administrations. It is, however, significant to note that under the administration of President Diosdado Macapagal, there was an attempt to revise some aspects of our semi-feudal legal system in order to fit the program of agro-industrial development for the country. Economic and social developments were also brought about with the ideas expressed by Filipino thinkers as basis.[36] With the inauguration of President, Ferdinand E. Marcos, there has been a focus on national greatness, drawing inspiration from the monumental grandeur of the nation's heroic past.

III. NATURE OF PHILIPPINE JURISPRUDENCE

By accident of history, there took place in the Philippines the blending of two great systems of law, namely, the Civil Law and the Common Law.[37] As noted by an elder jurist and statesman, this development started with the coming of the Americans to the islands.

> The coming of the Americans marked a new life in the history of our jurisprudence. Already, the times were characterized with many problems in the social, economic, and political life of the people. Spanish influence was still fresh, and the inertia of Spanish jurisprudence was still a factor, as it still is, in the legal growth of the new era. The problems confronting the newly acquired territory were peculiar and novel, and while the Congress of the United States was studying the advisability of extending into the archipelago the principles and doctrines well established in the American jurisdiction, our own government agencies and instrumentalities were busy reconciling our laws with the then current problems towards the end of fostering their early and satisfactory solution.[38]

This happening did not escape some pessimism on the possible outcome of the meeting of the two world legal systems in the Philippines.

> The implantation of American sovereignty in the Philippine Islands marked the genesis of a unique legal system in which the two streams of

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[35] Francisco, Vicente J., *Ultra-Nationalism,* 24 L.J. 111 (1959).

[36] The most revolutionary of these measures is Republic Act No. 3844, approved on August 8, 1963, otherwise and more commonly known as the Agricultural Land Reform Code.

[37] See *supra* note 4 at 728.

[38] See *supra* note 2.

> the law — the civil, the legacy of Rome to Spain, coming from the West, and the common, the inheritance of the United States from Great Britain, coming from the East, after circumnavigating the world have met on common ground. This consortium of the world's two great legal systems, "originating from different sources, flourishing in different countries, among *different peoples, and diverse institutions, surroundings, and conditions,*" which in this time may form an amalgam to produce a peculiar national system, has wrought lamentable confusion in the existing substantive law.[39]

At any rate, there can be no doubt that the Philippines is an heir to both systems of law.[40]

> We have seen the origin and development of the Philippine jurisprudence from its Roman prototype on one side and from Anglo-American system on the other; we have seen that the Roman Law was brought to these Islands through the agency of Spain; we have also seen that the common law in its modified form is being extended to us through the medium of the United States. We then may conclude that we have the world's two great legal systems contending for supremacy in these Islands.[41]

As a consequence, there has been a tendency to amalgamate into one body the laws of the conquerors and the laws of the conquered.[42] We quote Dr. Laurel's own words:

> The blending of the two great systems of law has already taken place in the Philippine Islands. We can not now evade the tendency to amalgamate into one body the laws of the conquerors and the laws of the conquered. But much more, in the matter of the development and perfection of our unique legal system, remains to be achieved. As in the present State of Louisiana, the Anglo-American law has to mould our criminal and commercial laws as well as the law of evidence. The development of the law of corporations, damages, and procedure must largely be influenced by the Anglo-American law; while the law of persons and domestic relations, of property, succession, obligations, and in general the private law, or the law governing private persons, their inter-relations, property, and obligations must remain based upon the civil law. But every principle of law has to be chosen and adopted with care.[43]

But as predicted earlier, such development was not without any problem. Basically, Dr. Laurel saw this problem when he said:[44]

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[39] David, Gonzalo D., *Are Sociedades Anonimas Corporations?* 17 PHIL. L.J. 151 (1937).

[40] Laurel, Jose P., *Looking Forward: The Golden Age of Procedure,* 20 PHIL. L.J. 17 (1940).

[41] Cuyugan, Antonio E., *Origin and Development of Philippine Jurisprudence,* 3 PHIL. L.J. 212-213 (1917).

[42] LAUREL, ASSERTIVE NATIONALISM 80 (1931).

[43] *Id.* at 80-81.

[44] *Id.* at 69.

> Our system of jurisprudence, while it may appear satisfactorily to some persons, is not a credit to us. If we trace the historical development of our jurisprudence, we shall find that, from the time of Spanish domination to the present, we have always been governed by foreign laws; that is, by laws which were imposed upon us by our conquerors.

More directly, Dr. Laurel pointed out that there resulted a confusion from the blending of the two systems.

> Here in the Philippines two divergent systems of law, the Roman-Spanish civil law and the Anglo-American common law, have met and blended. While the blending of these two great systems has given our laws elasticity and progressiveness, yet it has engendered also great confusion. The crux of the situation lies in the restatement of common law principles which has been grafted bodily into our jurisprudence, and in those field where we cannot as yet avail of the restatement of the American law, we are faced with a task of great magnitude. Hence, while the need for codification of our laws is both immediate and imperative, we realize with Justice Cardozo that "only powers superhuman could compass that achievement." All we can hope to achieve is to erect a modest structure sufficient to harmonize our legal requirements with our present-day needs in so far as it is compatible with the architectonic wisdom of our people.[45]

Dr. Laurel specified the problem in 1931 as follows:[46]

> For example, we find that the Spanish Civil Code is still the governing law in this country, notwithstanding the fact that such a body of law was drafted by Spanish jurists having in view the conditions and needs of the Spanish people and without regard to the customs, traditions, and history of the Filipinos. While the Spanish Civil Code is a good system of law from the point of view of logical arrangement and symmetry, yet I know that many of its provisions are not only obsolete now, but are entirely inapplicable to local conditions in the Philippines. What is true of the Civil Law is also true of the Commercial, Penal, and other laws. When the United States took possession of the Islands, they naturally brought

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[45] Laurel, Jose P., *Integration of Philippine Laws,* 21 PHIL. L.J. 96 (1941).

[46] See *supra* note 44.

"The Philippines is the only civil law country in the world today that has no civil code of its own, that is the genuine expression of her people. This is because the civil code which governs the Philippines today is the civil code of Spain, which has been enforced by the decree of Queen Maria Cristina, not by the will of our people. The proclamation, therefore, of his Excellency, President Manuel L. Quezon, for the codification of the substantive laws of the country, particularly the Civil Law, which is the law that governs the private relations and life of our people, constitutes a landmark in our national history. Not only should the codification systematize the substantive laws to make its provisions clear and definite for ready reference by lawyers and judges, but it should be written for the people. It should be imbued by the principles of democracy, social justice, real equality, human dignity and social solidarity, which inspire the social philosophy of our Constitution." — Florendo, Gerardo, *Bases of a New Civil Code,* 8 L.J. 905 (1940).

> with them their system of jurisprudence and promulgated laws, with the intention of improving upon the legal system prevailing in the Islands at the time. They passed, among other laws, the Code of Civil Procedure based upon the Anglo-American system of jurisprudence. The result, as has been said by a Filipino judge, is that we have a blended or mestizo system of jurisprudence in the Philippines. Who knows but that the cross-breeding of the Castilian lion and the American eagle had resulted in the evil birth of a phenomenal creature!

There can be no question that Philippine jurisprudence has remained basically civil law. On the other hand, it cannot also be doubted that the common law has gained foothold in this country.

> In these few cases just cited, although there is a seeming conflict of opinion, the majority seem to be inclined to hold that the common law of England, or at least its modified form as imbedded in the American jurisprudence, has taken a permanent foothold in this Archipelago, and exerted its influence over the existing jurisprudence, in time to form an amalgam with the other system now in vogue and produce a new species which would be neither Roman nor Anglo-American.[47]

According to Dr. Bocobo, the Code Commission, in working out the rules to be embodied in the Civil Code, drew principally from two sources: (1) the Anglo-American equity jurisprudence and (2) the general principles of natural justice.[48]

After all is said and done, there is something which the Filipinos can be happy about the meeting of the two legal systems in this country. Dean Abad Santos has noted thus:[49]

> One of the chief prides in which a Filipino lawyer may very well indulge is the fact that he can feel more or less at ease in either the Civil law or the Common Law. The Philippines, because of its relations with Spain for almost four centuries, is the rightful beneficiary of the Roman Law which is the common heritage of civilization. Then too our country's almost half a century of contact with Anglo-American law has afforded it the opportunity of enriching its legal institutions and techniques. Thus it is said and with much truth that in the Philippines there is a happy blending of the best of the two aforementioned systems of law.

One of the leading advocates and statesmen of the country made the following observation:

> The jurisprudence of our country has followed the general pattern of our culture, and is a unique hybrid of the European and the Anglo-

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[47] See *supra* note 41 at 213.

[48] Bocobo, Jorge, *Equity in the New Civil Code*, 14 L.J. 230 (1949).

[49] Abad Santos, Vicente, *Trusts: A Fertile Field for Philippine Jurisprudence*, 25 PHIL. L.J. 519 (1950).

> Saxon disciplines and traditions. Despite recent reforms and revisions, our civil and commercial law is predominantly Spanish in substance, and our political and constitutional law profoundly American in inspiration. The body of our statutes derives from the European school; but our procedure, except for such unimportant features as the jury system, has been patterned on American practices and rules.[50]

As a natural consequence of the fundamentally civil law influence in Philippine jurisprudence, there has predominated in this jurisdiction a positivistic approach to legal questions with statutory provisions as the primary authority over and above precedents and customs. In fact, an allegedly abusive resort to positivism has caused a cry of protest from some quarters.

> "We do not know where we are going, but we are on the way." The statement practically summarizes the present way of legal and official thinking in the Philippines. There has been a sudden increase of law schools, but a meagre few have ever attempted seriously what legal philosophy they should stress to students. What is still more unfortunate is that the problems of national life have arisen directly from an ultra materialistic and positivist attitude toward law and life. We are approaching, we fear, a stage when ethical and moral content of our philosophy will be abandoned, when citizens and even public officials will feel free to assert, without restraint, their personal and class selfishness and avarice. The sole aim of many is profit, the affairs of government left to amateurs or self-seeking politicians who barter principles for self-aggrandizement.
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> It is true that the Philippines has been the meeting place of the best world legal systems, but that at the same time, it has also sadly succumbed to the influence of extreme pragmatism, positivism, voluntarism and utilitarianism.[51]

Worthy of note is the fact that there has been of late a slight but significant tendency to depart from the purely positivistic pattern. Touching on two decisions of the Supreme Court,[52] a U.P. law professor made the following observation:

> There is now a noticeable trend back to natural law thinking after almost two centuries of neglect. While one might say that it is quite an old idea yet it has certain charms that excite revisit. It has always been a concept of considerable significance for both ethical and legal philosophers, and, in the connection last put, has influenced the major juristic

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[50] Francisco, Vicente J., *The Hybrid Pattern of Philippine Jurisprudence*, 16 L.J. 206 (1951).

[51] Coquia, Jorge R., *For a Revival of Natural Law Doctrine in Philippine Jurisprudence*, 16 L.J. 2 (1951).

[52] Rutter v. Esteban, G.R. No. 3708 (1953) and De la Cruz v. Sosing, G.R. No. 4875 (1953).

> schools of thought and, thereby, the legal ordering. The new-found interest then in the natural law theory is not merely historical but juristic, especially in the light of two recent decisions of the Supreme Court of the Philippines in which the natural law theory played an important role: *Rutter v. Esteban* and *de la Cruz v. Sosing*.[53]

IV. CONCEPT OF LAW

It is generally known that there are as many definitions of law as there are schools of jurisprudence or legal thought. Of interest in this work are the different definitions of the term attempted at by Filipino thinkers.

One writer defines law as universally accepted rules for the guidance of human action, prescribed and enforced by a sovereign political authority.[54] Another looks at law as that system of norms of conduct which, in practice, is recognized by the judicial authority in a given jurisdiction as binding on all persons within such jurisdiction.[55] A professor of law makes the following broad definition:[56]

> The same word "law" is used to indicate a broad generic sense when it is simply referred to as "law" without a definite article "the", e.g., the law. As a generic term Dean Roscoe Pound has stated that it is used to mean the legal order or the regime of adjusting relations and ordering conduct through the systematic and orderly application of the force of a politically organized society. In this sense, the word "law" is used with reference to *derecho, jus, droit, diritto, recht, or kautusan*. The grand central idea of the law is thus not *ley* but *derecho*, not *lex* but *jus*, not *batas* but *kautusan*. As the legal order, or the entire system of ordered liberty, or the total process of lawness, it is made up of a body of legal precepts and a body of received or traditional ideals of the end of the law. If the law is to be truly workable and effective then it must always have ideals or "anticipatory constructs."

The following definition stresses on custom and morality:

> Law is primarily custom and morality codified. It is also public policy expressed. But custom, morality and public policy change with the change of the times, and so does law. As new ideas evolve and new thoughts arise which to the lawmaker reflect the best and the ideal, and as these ideas and thoughts gain ascendancy in the life of a people, new laws

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[5a] Pascual, Crisolito, *Natural Law Revisited* 30 PHIL. L.J. 330 (1955).

[54] ZAFRA, THE STATUS OF THE PHILIPPINES UNDER THE COMMONWEALTH, preface (1937).

[55] Francisco, Vicente J., *The Rule of Law and the Judiciary in the Philippines*, 24 L.J. 42 (1959).

[56] Pascual, Crisolito, *The Policy Function of the Law; Value Creation, Clarification and Realization*, 29 PHIL. L.J. 431, 432-433 (1954).

> are enacted to suit the resulting change. This is but inevitable, for such is the law of progress; and law is at all times progressive. Sometimes the lawmaker may be far advanced of the times, and at occasions behind it; but in the main, it can well be said, that the laws of the land reflect the customs and morality of its people and reveal the public policy of its government.[57]

Sociological thought is represented as follows in the language of the law, science and policy approach:

> To repeat, legal education is concerned with the training for leadership in democracy. Law cannot be regarded at present solely as legal doctrines or as a peculiar set of technical symbols useful in predicting judicial behavior, but rather as the whole of a community's institutions of government, the sum of all the power decisions of the community. It has more than the primitive functions of maintaining order. It is a positive instrument for promoting and securing all the other basic values of the community like welfare, respect, wealth, skill, and enlightenment. The court is not therefore the only principal and proper instrument of legal control. Other institutions and practices which are already in being but can stand improvement, or which may be created for assuring a wider sharing of such values likewise serve the same purpose.[58]

The following is one of the practitioners' viewpoint with the shade of sociological jurisprudence:

> The law, my friends, is not like any other profession, the study of which is confined during the years of college. The law is an ever-changing coefficient of our social life, and, therefore, as a corollary, the legal profession, if it hopes to be responsive to social fluctuations, must itself be constantly informed. This means continuous study and research — a process which is tedious and burdensome, but fruitful and necessary, if the law were to remain the "soul of our existence" and the "foundation of our social life."[59]

Such is the case, especially when we take into account that —

> Law today is no longer the eternal, immutable truth of the Natural School, nor the spirit of the people, but is the product of infinitive forces variable with time and place. The legal method of today is no longer that of logical deduction from unchangeable standards but is the finding of a Just Decision to be aimed at consciously from the beginning.[60]

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[57] Cabatuando, Jose R., *Should Impossible Crimes be Punished?* 13 PHIL. L.J. 18 (1933).

[58] Fernando, Enrique M., *Education for the Law: Training for Leadership in a Democratic Society,* 25 PHIL. L.J. 441, 441-442 (1950).

[59] See *supra* note 2.

[60] Diokno, Ramon Jr., *What are "Los Principios Generales del Derecho" in Article Six of the Spanish Civil Code,"* 10 PHIL. L.J. 1, 23 (1930).

Dr. Laurel made an incisive discourse on the nature of law thus:[61]

> It has been said that knowledge of law is a mastery of legal principles, but this statement is not only partly true nowadays. Law is all inclusive. We do not turn to a body of isoteric legal doctrines, at least not invariably, to find the key to some novel problem of constitutional limitation, the bounds of permissible encroachment on liberty or property. We turn at times to physiology or embryology or chemistry or medicine — to Jennes or Pasteur or Virchon or Lister as freely and submissively to a Blackstone or a Coke. Of course, even then we try to know our place and exhibit the humility that becomes the amateur. We do not assume to sit in judgment between conflicting schools of thought. Enough it is for us that the view embodied in a contested statute has at least respectable support — its sponsors, if perchance its critics — in the true abodes of science.

The philosophical view-point is thus represented:[62]

> Philosophically, the concept of legal control may be divided into two classes: the *a priori* and the *a posteriori*. The *a priori* concept of legal control starts off from an ideal postulate, usually assumed as axiomatic, and proceeds deductively in the enunciation of particular legal canons which are held to apply to any legal complexus. It is evident that this method altogether prescinds from the empirical environment of any given legal situation. The leading and the inferred premises are regarded as definitive formulas of legal conduct and are for that reason independent of the vicissitudes of time and space. The outstanding example of the *a priori* concept of legal control is the metaphysical theory of law which is usually associated with Hegel. . . .
>
> The *a posteriori* concept of legal control, on the other hand, propounds a method and a doctrine which is inverse to that of the *a priori* concept. In methodology, it proposes induction, or more appropriately, experiment. In doctrine, it advocates social utilitarianism. As stated by Jeremy Bentham, social utilitarianism is the interest of the greatest number. . . .

At this point, it may be noted that, as one writer has called attention to, law is not only the definition but also the limitation of power.[63]

It has also been observed that, by force of habit, there has been the thinking that the end of law is logic and not experience contrary to what Justice Holmes believed.

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[61] LAUREL, PROCEDURAL REFORM IN THE PHILIPPINES 39 (1940).

[62] See *supra* note 18 at 87-88.

[63] Ledesma, Carlos, *The Proper Place of Administrative Law in our System of Government*, 20 PHIL. L.J. 403, 411 (1941).

> In a large measure, much of our present confusion is due to our habits of mind acquired for more than half a century. We still believe as did our forbears in the nineteenth century across the seas, that the end of the law is logic and analysis, and nothing more. We think, if we may borrow a stock illustration of Roscoe Pound that the judicial proces is to be a "sort of slot machine proceeding in which the facts were put in, the court pulled a logical lever, and pulled out the predetermined result." If the law were so certain, there would be no reason calling it a jealous mistress, nor do we believe there would be so many worshipping at her shrine. We hazard a statement that this cast of mind has been largely moulded by our reverential adherence to Spanish commentators whose end of analysis now belongs to a passing age. Those who have sat in many a courtroom and observed the everyday working ideal of the lawyer are familiar with this mode of thought. How vain must this ideal be to those growing number who believe with Holmes that the life of law has not been logic but experience?[64]

A theological point of view connects law with liberty in the sense that liberty has for its assumption the rule of law. This view defines law as that which makes the good manifest, liberty being the spontaneous obedience to law.[65]

The relation between law and morality has been enunciated by Dr. Laurel. According to him, if there is a moral world, there must be a moral order, and where there is order, there must be law. He added that from this point of view, moral order is divine and righteousness, as an essential attribute, is the primal law and guiding principle.[66]

But Dr. Laurel was not content with the ethical exposition of the law. He went further in finding the explanation in the biological sphere.

> But the explanation may perhaps be drawn from the early biological teaching that many forms of life have developed from the protoplasmic to the more complex and higher and more efficient forms and that, sociologically, human society has emerged from a state of barbarism to better forms of organization and higher degree of compactness. We have reached the present state of development and now occupy the vantage ground from

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[64] Navarro, Emiliano R., *A Word More on Moncado vs. People's Court et al.*, 16 L.J. 154 (1951).

[65] De la Costa, H., *On Peace and Liberty,* (An introductory note to ARANETA'S CHRISTIAN DEMOCRACY FOR THE PHILIPHINES 59 (1958).

[66] Laurel, Jose P., *The Foundation of Human Relationship,* 14 L.J. 57 (1949). According to Dr. Laurel, unlike the physical world which encompasses only the phenomenal and sensual, morality rests in the supersensuous sphere of the spirit where the inner verities are apperceived above the accident of time and space and virtue is rendered secure against the constant provocation of the senses. From this point of view moral order is divine, the righteousness as an essential attribute, is its primal law and guiding principle. — LAUREL, MORAL AND POLITICAL ORIENTATION 28 (1949).

which to gain a varying perspective. The immensity of the panorama indicating the length of what has been traveled and the difficulties met in the travail should not detain us but should serve to enable us to visualize the future with confidence. The goal is not yet reached, but it is within sight.[67]

Dr. Bocobo had this view on law:[68]

It is known that there are three sources of the law: (1) positive law, emanating from the legislature; (2) customary law, emanating from the people; and (3) judge-made law, emanating from the courts. Judicial decisions are by far the best and most desirable source of law, because the principles evolved by the judiciary grow out of actual controversies, and in each case the sense of justice deeply felt by the judge when he is faced by a real conflict between the claims of the parties is a solid guaranty of a just solution. The spark of conflicting interests kindles the conscience of the judge. On the other hand, customs formed by the lapse of time become obsolete because of changing social conditions. Besides, custom is insignificant in the Philippines as a source of law, because the Civil Code states that custom is followed only when there is no law applicable. Legislation is often a mere abstraction or speculative process in the mind of the drafters of the law; and too often laws are not carefully pondered upon in the midst of popular excitement, or because of the compelling pressure of legislative business.

Supplementing this view is that calling attention to the significance of dissenting opinions as the voice of the minority.

. . . Sometimes also dissenting opinions are more stimulating and thought provoking than the opinions of the majority. The student in such cases is advised not to ignore this minority voice. He should know not only what the law is now but what it may be in the future. For the law is a progressive science. It is ever changing. What may be an accepted dogma today may have to be repudiated tomorrow in the interests of progress.[69]

Along this line, one of our elder statesmen and jurists said:[70]

I subscribe to the theory that the juristic thought of a country invariably embodies the passing and shifting problems of its generations, and the law, therefore, becomes the repository of a people's growth and fulfillment — to the end that the legal aphorisms and doctrines found useful today, though they may be discarded tomorrow, may nevertheless be signposts along the legal highway, giving us a sense of direction and incentive in the solution of our social, political and economic problems.

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[67] See *supra* note 61 at x-xi.
[68] Bocobo, Jorge, *Unfettering the Judiciary,* 17, PHIL. L.J. 139, 140 (1947).
[69] Lichauco, Marcial P., *Studying Law Thru Cases,* 11 PHIL. L.J. 48 (1931).
[70] See *supra* note 59.

> It is not surprising then, that from the start, the sociological school of jurisprudence came into prominence — starting of course with the desire of our early jurists to reconcile American and Spanish Institutions, and to solve the new problems posed by the new era of American domination.

One writer believes that while law is primarily customs and morality codified, it is also public policy expressed, and that while it changes with the changing of the times, law is always fundamentally the expression of the people's desire. It is the view of the same writer that so long as a law corresponds with the actual feelings and demands of the community whose conduct it seeks to regulate, however archaic and ancient it may be, however unwise or unliberal its provisions are, it is the rule that should be adopted, the regulations that should exist.[71]

V. LAW AND JUSTICE

It is said that every legal system has two goals, namely, social order and justice.

> Every system of law aspires to do two things: to establish social order and to render justice. Of the first end arises the need of stability; and of the second, the need of change. Hence the truth of Dean Pound's statement: "Law must be stable and yet it cannot stand still.[72]

But what is justice? As in the case of law, there are as many definitions of justice as there are schools of jurisprudence. In a country which is predominantly civil law like the Philippines, it is natural to expect a positivistic approach to law and justice. But possibly as a consequence of the common law influence, it may be interesting to consider the varied and various views on this subject as expressed by Filipino thinkers.

In his article entitled "There can be no justice without truth, no liberty without justice, and no democracy without liberty," Chief Justice Roberto Concepcion said:[73]

> And what is justice? In common parlance, justice is to give each his due. As Justinian had put it: "Justice is the constant desire and effort to render to every man his due." What is due to each, however, cannot be determined, much less given, without accurate information about the pertinent facts. Hence, the wisdom in the words of Disraeli: "Justice is

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[71] See *supra* note 54 at 27-28.

[72] See *supra* note 60.

[73] Concepcion, Roberto, *There can be no justice without truth, no liberty without justice, and no democracy without liberty*, 23 L.J. 113 (1958).

> truth in action." Indeed, possession of the truth is indispensable to the administration of justice. But, Judges have no personal knowledge of the conditions surrounding the litigations. Judges ascertain the factual background of each controversy by sifting the evidence introduced by the litigants, through their respective counsel. Judges cannot possibly do justice — in its objective sense — to the parties, if the facts proven by them do not dovetail with the truth. What is worse, the decision of a court of justice, if predicated upon distortion of the truth, is bound to sanction and perpetuate the wrong complained of, instead of righting it. In short, rather than a bulwark of the rights of the weak, such judicial award may come to be regarded as an instrument of oppression.

According to Dr. Laurel, justice is the rectitude of mind which enables one to estimate correctly what is due to every man, and give this to him conscientiously, regardless of any other consideration. He went further to state that it is not enough that a man endeavor to do justice always; he must be willing to suffer rather than do anybody an injustice.[74] To him, "what is unjust is immoral and what is immoral is stupid.[75]

In a commencement address entitled "A Call for Moral Regeneration," the late President Manuel A. Roxas said:[76]

> The concept of justice as we understand it — justice based on moral principles and revealed by the conscience of every man — is the only secure foundation for civilized society. And justice requires that individuals and nations perform the promises they have made. Many generations before Christ, the Jewish prophet Ezra said that rigorous observance of the law was the sole rule for righteous living. If he meant not only the written law but also the moral law which is likewise written in the hearts of men, he must be regarded as having enunciated a principle which is of inestimable value to mankind. It was left for Christ to clearly establish this principle. In His priceless philosophy He enjoined mankind to obey the laws of Caesar; and as for Mosaic Law, He was most persuasive when He taught the duty to obey not so much the letter of that law, as the spirit of it, which is no other than the moral law, written upon the tablets of conscience at a summit higher than Mount Sinai — the pinnacle of the human spirit. Thus, He taught the observance of the fundamental virtues of justice, kindness, and mercy, and the respect for the rights of others.

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[74] LAUREL, FORCES THAT MAKE A NATION GREAT 51 (1944).

Dr. Laurel further observed thus: "A just man invariably appraises men and things on the basis solely of their intrinsic worth and value, and guides his action with reference to them accordingly. Justice is a noble virtue and among the hardest for imperfect man to practice faithfully. 'Man is unjust but God is just' has been the common lament since the beginning of humanity. All the more honor therefore to the man who acts justly in all circumstances. — *Id.*

[75] See *supra* note 66 at 58.

[76] Papers, Addresses and Other Writings of Manuel Roxas, pp. 690-691 (1954).

According to the thinking of President Roxas, justice is something more than the moral intangible concept of giving to everyone his due and punishing those that are guilty of violating the law. Justice must be pure. It must be practical. It must be fair. It must be prompt. It must be fierce. A mere lip service to justice does not establish justice in the land. Justice must take form; it must take substance. Justice must affect the life of every individual.[77]

Reviewing Dean Roscoe Pound's book entitled "Justice According to Law," one writer posed the following question which goes to the core of the relationship between law and justice:[78]

> If justice, then, is not the abstraction that it has been made out to be, but a reality which is alive with social implications, then law must be of such nature as to serve the ends of justice. But what is law? . . .

To the thinking of Dr. Laurel, the aim and purpose of law is justice and justice is administered through knowledge and ascertainment of truth.[79] However, he pointed out the difficulty encountered in the process.

> . . . To gain this lofty objective a method must be prescribed, a path indicated, a procedure ordained. The difficulty is that law is frequently but a vague expression of a general principle, and courts have virtually to "legislate between gaps." Not infrequently, also, the indicated path is or leads to a winding zigzag with the result that the destination is reached with difficulty, expense and perchance, peril.[80]

This is especially so because one of the main functions of law is to distinguish between the good and the bad. Dr. Laurel stressed this point thus:[81]

> Law is that which differentiates between good and evil — between just and unjust. If law should be taken away or abolished, all things fall into confusion. Every man will become law to himself, a fact which,

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[77] *Id.* at 502.

On this point, the late President Manuel Roxas stated further thus: "I made this principle the lamp for my footsteps throughout my life. I commend it to all of you. I found it an excellent touchstone to determine the wisdom or justice of all my actions. It conforms strictly to the requirements of the moral law which underlies our social order and our legal institutions. It could be made the moral creed of all our citizens." — *Id.* at 687.

[78] Soliongco, I.P., Book Review of Roscoe Pound's Justice According to Law, 27 Phil. L.J. 604 (1952).

[79] LAUREL, PERIODICAL REFORM IN THE PHILIPPINES ix (1940).

[80] *Id.* at ix-x.

[81] See *supra* note 42 at 154-155.

> in depraved condition of human nature, must needs produce many great enormities. Lust and envy, covetousness and ambition will become laws. The law has power to prevent, to restrain, to repair evils; without this power, all kinds of mischiefs and distempers will break in upon a state. It is the law that entitles the people to the protection and justice of the government. All things subsist in a mutual dependence and relation. It is the labor of the people that supports and maintains the government; if you take away the protection of the government, the vigor and cheerfulness of allegiance will be taken away, though the obligation remains.

Even during the Spanish times, Dr. Jose Rizal had occasion to make this observation, to wit:[82]

> When the laws and the acts of officials are kept under surveillance, the word justice may cease to be a colonial jest. The thing that makes the English most respected in their possession is their strict and speedy justice, so that the inhabitants repose entire confidence in the judges.
>
> Justice is the foremost virtue of the civilizing races. It subdues the barbarous nations, while injustice arouses the weakest.

Considering that the Philippine legal system is basically Civil or Roman Law, we may find the following significant:[83]

> The Roman Law was based on the sound and abstract principles of justice. As justice is the same in every country and at all times so the Roman Law has invaded the domains of all countries of the world and permeated in all their laws.

Along this line is the thinking of Dr. Jorge Bocobo, especially with reference to the reform introduced into the Civil Code of the Philippines, to wit.[84]

> One of the principal reforms in the new Civil Code is the emphasis laid upon equity and justice as against strict legalism or form. The project recognizes that more significant and more far-reaching than the formulation of legal rules, justice and equity should prevail in any legislation. In working out the rules to be embodied in the proposed Civil Code, the Code Commission drew principally from two sources: (1) the Anglo-American equity jurisprudence and (2) the general principles of natural justice.

Dr. Bocobo has expressed the hope that with the above an idea is given how the new Civil Code strives to temper the rigor of legalism in order that justice may triumph. After all, to his thinking,

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[82] See *supra* note 30 at 144.

[83] Ramos, Aurelio C., *The Roman Law in the Philippines*, 9 PHIL. L.J. 185 (1929).

[84] See *supra* note 48.

the paramount aim of the courts is to do justice, which should not be defeated by any technicality, or by the letter of the law.[85]

Dr. Laurel pointed out the responsibility of the courts in this regard. We quote the words of Dr. Laurel as follows:[86]

> The courts have a definite responsibility to perform; therefore, they must have the necessary power to meet this responsibility. Experience has demonstrated that the legislature cannot with full realization of the needs of the administration of justice, act to any greater advantage than the courts in the work of systematization and improvement in this allocated field. In the first place, it must be admitted that the judges are in a better position to know the needs that should be met to improve the administration of justice. In the second place, the legislature with its casual information and intermittent and periodical sessions, cannot be fully apprised of the needs and problems of the courts. And, in the third place, the formulation of any specific remedy in the form of rules and other measures not only requires familiarity with actual conditions but expert and systematic advice and while there may be found capable and qualified men in the legislative branch, these are likely to be few and have no time materially to devote their attention personally to the work of the kind that should be undertaken. The result of the time-honored usurpation, borrowing the language of Mr. Justice Cardozo of the Supreme Court of the United States, is that the legislature "patches the fabric here and there, and mars often where it should mend. . . ."

With the realization that "no method of administering justice will work well without a competent judiciary to operate it,"[87] Dr. Laurel also took cognizance of the fact that "uprightness and fearless impartiality are not exclusively a judge's virtue" and that "everyone needs to be just and render unto others what is theirs by right."[88] The necessity, if not indispensability, of the courts as the instrumentality of administering justice is thus stressed further.[89]

> Experience has taught us that until men become angels, and until a better order comes about, it will be foolhardy for us to turn our backs to the courts and judges and seek justice in what Dean Pound, in a masterpiece of understatement call "substitute agencies." What a situation it would be if, say, the Supreme Court were abolished and we had only Congress or the Executive Department to dispense justice!

It has been noted that the vital functions of popular government, from Plato's day to ours, have generally been grouped under

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[85] *Id.* at 231.
[86] See *supra* note 79 at 37-38.
[87] See *supra* note 87; also 8 L. J. 366 (1940).
[88] See *supra* note 74 at 52.
[89] See *supra* note 78 at 605.

fours headings for purposes of easier classification and organization. These four headings are health, justice, education and opportunity.[90]

> Justice, the second vital function... is important because even if the citizens should be healthy and fairly well-clothed and well-housed, but did not enjoy equality before the law, no material and moral rewards commensurate with their toil and service or with their contribution to the social good, they would still be far from happy and contented; the government under which they live cannot be rated as good and efficient...
>
> There is no adequate justice when too few of the people have too much while too many have too little not only of the world's material goods but also of the moral intangible satisfactions that come from enjoying the equal protection of the law and from the non-discriminatory dispensation of rewards for labor and service...
>
> ... If a small man is victim of a grievous wrong but cannot get redress in the courts either because he cannot afford the expense or the courts are biased against him, there also is no regime of justice. He and common people such as he, will not have trust and faith in the government.[91]

Writing with a rich background of labor cases and problems, former Presiding Judge Jose S. Bautista of the Court of Industrial Relation said[92]

> I made mention of democracy. What is democracy? The Filipino people established this Government to achieve peace and order, because without a government there can be no peace and order; because the objective of the government is justice, but there can be no justice when there is no liberty, and there can be no liberty without protection. The government may give the working men all of the rights, but if they are weak, without freedom and are under subjugation, of what use are those rights? That is what I meant when I said: the end of our courts is justice, and there is no justice when there is no liberty, and there is no liberty without protection.

From the point of view of the courts, the late Justice Jose Abad Santos made the following observation:[93]

> There are people who seem to think that in some cases they see the courts subordinating justice itself to legal technicalities. Thus they seem to think that there is now a sort of break between law and justice, between common sense of common men and law enforcement. Preferring plain justice and common sense as all men would sooner or later prefer,

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[90] LAUREL, BREAD AND FREEDOM 15 (1953).

[91] *Id. at* 15-16.

[92] Bautista, Jose S., *Unions and the Working-Man*, 22 L.J. 396, 430 (1957).

[93] Abad Santos, Jose, *Common Sense in the Administration of Justice*, 15 L.J. 98 (1950).

> they would subvert law and the institutions supporting it because they seem to feel their incompatibility with plain justice and common sense.

VI. LEGAL INTERPRETATION

The law as it is written is a dead and lifeless thing. Individual initiative is necessary in order to give it meaning and purpose. Individual action is essential in order that we may inject fire into its spirit and breathe the breath of life into its skeleton.[94]

Such a recognition brings us into the realm of legal interpretation as a means of finding the meaning of the law and giving life to the purpose or intention of the legislature. In the process, there are guidelines which should be borne in mind if faith be kept with the determined goal.

> The truth is that law cannot be interpreted to the letter "which killeth" in derogation of its spirit "which giveth life." Laws, and political laws specially, should be interpreted with a broad vision, with statesmanship; and that interpretation should be given which is intended to subserve national interests, having in view the history, the trend of events, nay, the aspirations of the people. . . . It is utterly unncessary to make any distinction between what is "legally right" and what is "politically wrong." In the interpretation of our laws, we should incline the balance in favor of that which is designed to give us greater powers in the administration of our affairs, legally and politically, such being the declared and avowed purpose of the Government of the United States as expressed in the Jones Law.[95]

For this purpose, there has been established in this country a judicial system. During the early days of the Commonwealth of the Philippines, the late President Manuel L. Quezon spoke on the subject thus:[96]

> Our Constitution establishes an independent judiciary by providing for security of tenure and compensation of our judges. But independence is

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[94] LAUREL, POLITICO-SOCIAL PROBLEMS 14 (1936).

[95] See *supra* note 42 at 113.

". . . For law, whether administrative or otherwise, is not only the definition but it is also the limitation of power." — See *supra* note 63.

[96] QUEZON IN HIS SPEECHES, pp. 86-87 (1937).

"It is for all of us, therefore, rulers and governed, to so nourish and guard the Constitution that it may forever yield for our people and posterity a bountiful harvest of liberty. *No man and no group of men made this Constitution.* It was the work of the Filipino people, who ordained and proclaimed it, and it is now and will always be the work of the Filipino people to make it real and true and lasting that the great purpose anunciated in its preamble may be fully achieved under the unfailing guidance of Divine Providence." — Recto, Claro M., *Constitution Day Speech,* 15 L.J. 51 (1950).

> not the only objective of a good judiciary. Equally, if not more important, is its integrity which will depend upon the judicious selection of its members. The administration of justice cannot be expected to rise higher than the moral and intellectual standards of the men who dispense it. To bulwark the fortification of an orderly and just government, it shall be my task to appoint to the bench only men of proven honesty, character, learning, and ability, so that every one may feel when he appears before the courts of justice that he will be protected in his rights, and that no man in this country from the Chief Executive to the last citizen is above the law.

As early as the Spanish regime in this country, Dr. Jose Rizal made known the following thoughts during an interview in his death cell:[97]

> I desire for the Philippine Islands such a system of legalized liberty as the Basque provinces of Spain have. I persist in condemning the rebellion. The sentence which deprives me of life is just if it has wished to punish in me the work of the revolution, but not if it takes into account my intentions.

Such was his longing for a regime of justice as to be confirmed in his own experience of want of it during the trial which preceded his execution. Even long before his own trial, he made the following observation:[98]

> True it is that the Penal Code has come like a drop of balm to such bitterness. But of what use are all the codes in the world, if by means of confidential reports, if for trifling reasons, if through anonymous traitors any honest citizen may be exiled or banished without a hearing, without a trial? Of what use is that Penal Code, of what use is life, if there is no security in the home, no faith in justice and confidence in tranquility of conscience? Of what use is all that array of terms, all that collection of articles, when the cowardly accusation of a traitor has more influence in the timorous ears of the supreme autocrat than all the cries for justice?

Along the same line of thinking, President Manuel A. Roxas said half a century later as follows:[99]

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[97] See *supra* note 30 at 369.

In his plea for justice, Dr. Rizal made the following statement: "Even the greatest criminals are not punished without being heard first, and then having an advocate allowed them: in main instances the law, in spite of its strictness, humanely provides the assistance of an official defender. In every case the accused, retaining his rights, awaits, not always in prison, the sentence which shall proclaim his innocence; or deprive him of his rights by the imposition of corporal punishment. But even then he knows the time fixed for its duration." — *Id.* at 354.

"At least put me on trial. If I am adjudged guilty, visit upon me the law's penalty — not punishments without limit which kill the social being and its activities. But if I am innocent, give me liberty." — *Id.* at 355.

[98] *Id.* at 130.

[99] See *supra* note 76 at 279.

> . . . My conception, our conception, of a regime of law is one which goes beyond that. It means that the people will have confidence in the public officials whose duty it is to execute the law; more particularly, they must have confidence in our courts of justice. They must be able to look upon the courts as the bulwark of their liberties, as the ever watchful sentinel that stands guard over their rights, their rights guaranteed by our Constitution and by our laws. These courts must function in such a way that they will create in the minds and in the hearts of our people absolute faith in their fairness and the impression that they really are the fountain source of justice and that they are the expression of the combined conscience of their fellow countrymen.

It is well settled that the administartion of justice cannot be left to Congress or the Executive Department of the government. As one writer has said, "experience has taught us that until men become angels, and until a better order comes about, it will be foolhardy for us to turn our backs to the courts . . .[100] On his part, President Manuel L. Quezon had this to say[101]

> An independent judiciary administering justice without fear or favor promptly and impartially to rich and poor alike is the strongest bulwark of individual rights and the best guaranty against oppression and usurpation from any source. Equally important is the maintenance of the confidence of the people in the courts. I will appoint no man to the bench without having satisfied myself, after a thorough investigation, of his character and ability.
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> To strengthen the faith of the common people in our courts, it is necessary that the utmost care be exerted in the selection of justices of the peace. These courts are often the only tribunals accessible to the larger portion of our population and it is essential that they be maintained worthy of their confidence. If the disinherited cannot obtain redress of their grievances or vindication of their rights in these courts, they have no further recourse, for the Courts of First Instance and the Supreme Court are often beyond their reach. By the impartiality and integrity of the justices of the peace, therefore, the judiciary of the Philippines is judged by the millions of our countrymen who live in the barrios and distant places. I pledge myself to do everything in my power to maintain these courts free from political or other extraneous influence and to appoint thereto only men of proven ability and integrity and of the broadest human sympathies.

Quoting the words of Disraeli to the effect that "justice is truth in action," Mr. Chief Justice Roberto Concepcion has pointed

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[100] See *supra* note 78 at 605.

[101] See *supra* note 96 51-52.

As noted by Dr. Rizal, the thing that makes the English most respected in their possession is their strict and speedy justice, so that the inhabitants repose entire confidence in the judges. — See *supra* note 30 at 144.

out that the "possession of the truth is indispensable to the administration of justice."[102] However, he also noted that —

> . . . But, Judges have no personal knowledge of the conditions surrounding the litigations. Judges ascertain the factual background of each controversy by sifting the evidence introduced by the litigants, through their respective counsel. Judges cannot possibly do justice — in its objective sense — to the parties, if the facts proven by them do not dovetail with the truth. What is worse, the decision of a court is bound to sanction and perpetuate the wrong complained of, instead of righting it. In short, rather than a bulwark of the rights of the weak, such judicial award may come to be regarded as an instrument of oppression.[103]

Such a situation has led some people to think that the courts are subordinating justice itself to legal technicalities and the same people, preferring plain justice and common sense as all men would sooner or later prefer, would subvert law and the institution supporting it because they seem to feel their incompatibility with plain justice and common sense.[105]

Ramon Diokno, Jr. has outlined the process of deciding a case as follows:[105]

> In deciding a case there are two moments: First, the ascertainment of the proper and just juridical norm; second, its application by means of syllogism to the case on hand. Obviously before a just norm can be applied syllogistically it must first be found. De Diego would find it by two methods: first, by the generalization of the provisions of the positive law; and second, by deduction from the superior principles of justice.
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> The first mode may be called technical, in accordance with codal provisions; and the second, the theoretical investigation of derecho in accordance with what is considered just.
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> Juridical construction having given and classified our legal materials, it then becomes necessary to determine the social end, or the juridical idealism of the period. The idea of derecho gives us the means of finding it in actual life, but it does not give us its content, which we must seek in human conduct, and in social phenomena. The idealism of a period is a state of fact, a condition which is deemed preferable to another because it is better. . . .
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> Juridical idealism being the preference of juridical conditions the next problem is how to ascertain it in a scientific manner . . . We can only say,

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[102] See *supra* note 73.
[103] *Id.*
[104] See *supra* note 93.
[105] See *supra* note 60 at 17-18.

> that [the judge should use all the means that legal science can give him. . . .[106]

According to Ramon Diokno, Jr., the legal method of today is no longer that of logical deduction from unchangeable standards but is the finding of a just decision to be aimed at consciously from the beginning.[107]

> There can be no "Derecho" except that which is Just. The law, customs, scientific law, etc., are but materials, data for arriving at a Just Conclusion. The law should first be sought as it has the prima facie presumption of being just, and the Civil Code is right according to what is Just which is to be found by all the means that legal science can give him.[108]

To the mind of the same writer, the legislative solution of how to fill the "gaps in the law" is but part of the larger problem with which it is inextricably connected of how the law may at the same time be administered and made to grow and adapt itself to the realities of life.[109]

Although the courts have usually disclaimed any right to legislate, according to Dr. Bocobo, they have, however, in fact made law. This is especially true in England, the United States, the Philippines and other English-speaking countries.[110] This has arisen out of necessity in the process of making a decision in certain cases.

> There are cases where the law is confronted by a situation where solution hinges crucially upon the insight of the judge rather upon mere subscription to stale legal formulas. In this difficulty, the judge becomes a law-maker, *albeit interstitially*. His role is to reconcile the dynamic interests of society with the static. Of course, he can choose between the two. But to preserve both in their respective spheres — that is the supreme task of law — and it is the recognition of this fact and some solid contribution to it wherein consist the enduring significance of Holmes and Cardozo in Constitution law.[111]

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[106] *Id.* at 18.

[107] *Id.* at 23.

[108] *Id.*

"Common law doctrines should not be in force as law in the Philippine Islands. They may be applied in the appropriate case like other data for the Just Decision." — *Id.*

[109] *Id.* at 2.

". . . The problem dates from antiquity. It has existed since we outgrow the primitive modes of obtaining redress by reprisals, private wars, and blood feuds until this day when the doctrine of the supremacy of the law is thoroughly established. . . ." — *Id.*

[110] Bocobo, Jorge, *The Cult of Legalism*, 17 PHIL.. L.J. 253, 255-256 (1937).

[111] See *supra* note 18 at 92.

Such necessity is further elucidated as follows:[112]

> The necessity of what is called judge-made law and the possibility of its existence arise from the power of the courts, which admittedly exists, to determine what the law is, if unwritten, or what it means if written.

Another justification for judge-made law was gven by Dr. Bocobo thus:

> The votaries of formalism worship the letter of the law with undiminished function. They have raised their faith on the pedestal of strict interpretation. Denying the right and the duty of the judge to declare new principles, or to adapt old rules to the changing needs of modern life, many lawyers in the Philippines put their absolute faith in legislative formulation as more than sufficient to unfold any policy of the State. Therefore, they say, the court should never usurp legislative functions by transcending the words of the statutes.[113]
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> * * *
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> In conclusion, it is the duty of the judiciary to unfold and develop the law by liberal interpretation. It is imperative that this far-reaching task of the judge should ever be upheld because no matter how well drawn up our statutory laws might be, lawyers usually demand that the letter of the law be adhered to if it suits the interest of their clients and the courts must choose which pathway to take —the formal or the substantial, the strict or the liberal. The noble purposes of the law have been lost in narrow and labyrinthical technicalities, whereas a broad and humane interpretation has opened the wide highways that lead to the common welfare. The experience of mankind shows that legalism has ever been the forbidding bulwark of the dominant caste, whether social or economic. A reflective contemplation of what the poet has called "the eternal landscape of the past" would make this sinister fact of history loom large in our minds, and impel us boldly to storm this fortress of special privilege.[114]

Professor Enrique M. Fernando's comments on Ehrlich's philosophy of law are worthwhile considering in connection with the subject of legal interpretation. We quote the same thus.[115]

> With all the adverse criticism though to which Ehrlich's philosophy of law may justly be subjected, still the fact remains that it represents a great advance in juristic thought. Judged as of the date in which he first gave it concrete expression, it was an achievement of the first magnitude. It rescued jurisprudence from the ossification which might have been its fate had no new light and insight from the related social sciences been

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[112] Cruz, Alberto V., *Judge-Made Law*, 19 PHIL. L.J. 98 (1939).

[113] See *supra* note 110 at 253.

[114] See *supra* note 110 at 263.

[115] Fernando, Enrique M., *Ehreich's Philosophy of Law*, 24 PHIL., L.J. 849, 860 (1949).

> admitted. Time had not dimmed the recognition of its power and its force. Scientific advances may suggest a change in the method. The growth of state control may suggest a re-examination of its content. But its aims and objective remain as timely today as it was when first enunciated. No science of law can afford to by-pass the "living law" — except on the pain of being condemned as barren and sterile.

Dr. Bocobo also observed that in another field of legal development, the courts of the Philippines have need of the philosophical, the far-flung view of positive law — in the questions that will be raised, in increasing number and eagerness, with respect to the Constitution of the Philippines. According to him, a judiciary that is bereft of a broad outlook of social and economic conditions, that turns a deaf ear to the voice of history, that does not look far into the future, would be unfit to grapple with these tremendous problems. He recognized the imperative need of encouraging a consecration of the eternal principles of justice and a devout cultivation of the "socialization of the law."[116] Moreover, he believed that not only must the courts reconcile the Spanish law and the American law, but the rules of each system must be adapted to Philippine conditions. To his mind, this duty can not be undertaken by the judiciary if it is shackled by the chains forged in technical reasoning.[117]

> More and more, jurists, judges and legislators all over the world are striving for what is called "the socialization of the law." This movement stands for the principle that the whole legal structure — statutory and judge-made — must be reconstructed on the bases of the changed and changing social and economic conditions of modern life. The breath of the new life of society must be breathed into the traditional concepts of the law. This "socialization of the law" would be hard of attainment if our courts did not feel the throb of present-day society — its tremendous struggles for readjustment and the restless longings of the masses for a decent living. And the experience of the past shows that the courts have been a tremendous factor in working our social justices.[118]

An elder stateman and practitioner has observed that the application of realist doctrines in the legal practice in the Philippines is still in its infancy, although in some isolated instances, there have been undertones of realism in our Supreme Court. According to him, how far our judges

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[116] Bocobo, Jorge, *Unfettering the Judiciary*, 17 PHIL. L.J. 139, 145 (1937).

[117] *Id.*

"The foregoing brief exposition, I hope, will give an idea of how the new Civil Code strives to temper the rigor of legalism in order that justice may triumph. After all, the paramount aim of the courts is to do justice, which should not be defeated by any technicality, or by the letter of the law." — See *supra* note 48 at 231.

[118] See *supra* note 116 at 142.

will turn to be realists, and how advisable this transformation should be, is not for us to answer. To him it is sufficient for us to recognize that government is a practical activity which must necessarily bring the judges as well as the members of the bar into the domain of juristic realism.[119]

As a result of the habit of thinking for more than half a century, there is still the belief that the end of law is logic and analysis in the same manner as a "slot-machine" jurisprudence would approach a legal situation. This cast of mind has been largely moulded by the reverential adherence to Spanish commentators whose end of analysis now belongs to a passing age.[120]

Recently, there has been a realization that law cannot be regarded solely as legal doctrines or as a peculiar set of technical symbols useful in predicting judicial behavior, but rather as the whole of a community's institutions of government, the sum of all the power decisions of the community. Having more than the primitive functions of maintaining order, the law is a positive instrument for promoting and securing all the other basic values of the community like welfare, respect, wealth, skill, and enlightenment. Under this set-up, the court is not therefore the only principal and proper instrument of legal control, but other institutions and practices which are already in being but can stand improvement, or which may be created for assuring a wider sharing of such values likewise serve the same purpose.[121]

There has also been the tendency toward natural justice. This was noted by Dr. Bocobo in *Insular Government v. Bingham*, 13 Phil. 558 (1909), where, speaking for the Supreme Court, he said that "justice is about the same under whatever law" and "civilized nations everywhere have adopted about the same rules of justice and law when they relate to fundamental principles affecting rights of man.[122] In *Alba v. Acuña*, 53 Phil. 380 (1929), he observed that the provisions of law on the subject were doubtful, but the Supreme Court chose to adopt the construction which was more in consonance with natural justice.[123]

> It is fortunate that at a time when legal positivism for all its strength is failing man the Philippine Supreme Court has, with confidence and belief and reason utilized the natural law in the manner it did in the Rutter

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[119] See *supra* note 2 at 147.
[120] See *supra* note 64.
[121] See *supra* note 58.
[122] Bocobo, Jorge, *The Role of our Supreme Court*, 17 PHIL. L.J. 146, 147 (1937).
[123] *Id.* at 147-148.

> Case. It has demonstrated quite well that age-old concept of the natural law is capable indeed of a modern content or application. Even cynical legal realist would find here the realization and validation of the natural law in the legal ordering. As for the Rutter Case itself, the writer takes it as indicative of the renaissance of the natural law in Philippine jurisprudence.[124]

Along the same trend is the following view expressed by the late Chief Justice Jose Abad Santos:[125]

> The time is past when courts could well afford to disregard popular approbation in their decisions. During the monarchical days, governments could exist even if they should disregard public opinion, but the people have discovered their power and are bent on making their government their servant instead of their master. As the agency of their government in the administration of justice, it would be well for the courts always to understand the trends and the people's thinking and to adjust their own prejudices to the changing ideologies of the people.
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> By public opinion I do not refer to mere fleeting passions of the mob in connection with a certain matter. I mean the broad opinion based on changing the basic outlook which people have regarding their relations between themselves . . .

Of recent vintage is the following notion about the function of the judiciary expressed by President Diosdado Macapagal:[126]

> That was a judge; that is what the people demand and expect of judges. I hope that, like Chief Justice Coke, you, our judges, will never bow before the majesty of politics or money or influence. It takes courage, character, and conviction to uphold the supremacy of the law, but I know that you have that innate quality to have that courage, that character, that strength of conviction.
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> Our courts have been established not only to administer justice in the solitary realm of the judiciary detached from the other spheres of government and society. They constitute an implement of the Republic charged with the mission of placing within the reach of our people one of the three great fundamental ideals of justice, liberty and democracy which together foster the general welfare of the people. Although independent, the judiciary is not therefore detached from the stresses that move the Nation as it seeks the general welfare and must play a proper part in the husbanding and control of the current national forces in order to divert them to the attainment of the national good.

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[124] Pascual, Crisolito, *The Natural Law Theory and the Philippine Supreme Court: A Brief Isolated Study of Useful Role and Function of Natural Law in the Order*, 19 L.J. 51, 66 (1954).

[125] See *supra note* 93.

[126] MACAPAGAL, DIOSDADO, NEW HOPE FOR THE COMMON MAN 254-255 (1962).

With the proposal to adopt a new code in the field of Criminal Law, a new approach comes to the front. Dean Vicente Abad Santos has enunciated this approach thus:[127]

> The proposed Code of Crimes is an entirely new edifice because its philosophic foundation is different from that of the Revised Penal Code. The present Code is based on the juristic or classical philosophy of criminology which considers man to be a moral creature with free will. Accordingly, this philosophy bases criminal liability on human free will; the purpose of the penalty is retribution. Opposed to this philosophy is the positivist philosophy which holds that "'crime is essentially a social and natural phenomenon, and as such, it cannot be treated and checked by the application of abstract principles of law and jurisprudence nor by the imposition of punishment, fixed and determined *a priori;* but rather the enforcement of individual measures in each particular case after a thorough, personal and individual investigation conducted by a competent body of psychiatrists and social scientists.

VII. LAW AND THE INDIVIDUAL

As noted earlier, the law as it is written is a dead and lifeless thing, and to give it meaning and purpose, individual initiative is necessary. In fact, individual action is essential in order that fire may be injected into its spirit and breath of life breathed into its skeleton.[128]

Dr. Jose Rizal discussed the subject of man as follows:[129]

> Man has at last realized that he is a man; refused to analyze his God and penetrate the immaterial which he can not see, to deduce laws from the fantasies of his mind. Man realizes that his heritage is the vast world the dominion of which is within his grasp. Tired of his useless and presumptuous work, he bows in humility and examines everything which surrounds him. Look at our present poets; the Muses of nature are little by little opening their treasures to us and beginning to smile on us in order to encourage us in our labor. The experimental sciences have already yielded their first fruits and their perfection is now only a matter of time. The new lawyers are adapting themselves to the new views of the philosophy of law.

Man's object, according to Dr. Rizal, is not to satisfy the passions of another, his object is to seek happiness for himself and his kind by traveling along the road of progress and perfection.[130] With this realization, he said:[131]

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[127] Abad Santos, Vicente, *The Proposed Code of Crimes,* 5 Law Register 3 (February, 1960).

[128] See *supra* note 94.

[129] See *supra* note 30 at 300-301.

[130] *Id.* at 170.

[131] *Id.*

> The evil is not that indolence exists more or less latently but that it is fostered and magnified. Among men, as well as among nations, there exist not only aptitudes but also tendencies toward good and evil. To foster the good ones and aid them, as well as correct the evil and repress them, should be the duty of society and governments, but less noble thoughts did not occupy their attention.

Also recognized is the fact that the powers of man are limited and his sense of insecurity inclines him to lean upon the stronger arm of Providence who is all-powerful.[132]

> Man wronged by another, discriminated against thru the practices perpetrated by social stratification or denied his right on sheer technicalities may yet find vindication thru the instrumentalities of human laws and institutions. Human justice may restore his losses or correct omissions — but the inappealable judgment comes from one Power alone, the Supreme Law-giver. And his judgment is not the result of arguments and citations or established precedents but the outcome of Divine will which ignores no evidence and forgets none of the missteps of man. And man, stripped of all his boastings and pretensions finally gets what is due him.[133]

Dr. Laurel bewailed the fact that man has by his science conquered the inorganic and the animal world and harnessed their forces to minister to his needs and to suit his fancy, but that man has neglected the science of man as a human being.[134]

But on the whole, man has fixed his eyes on the goal for which he must strive if he has to give meaning to his existence. As the late President Elpidio Quirino put it, the object is a happy citizen of the country that is equally a happy and helpful citizen of the world, that is, one who "lives free and secure not in national isolation but in international dependence."[135]

> Similar movement is now very timely in the Philippines. The very laudable innovations of our Civil Code which treat on the preservation and elevation of the dignity of the human personality, show the effects of this "revival." There should be, however, more interest in natural law philosophy which could be shown and applied in court opinions, legislation

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[132] Dr. Laurel said:"The powers of man are limited. His helplessness and sense of insecurity instinctively incline him to lean upon the stronger arm of Providence who is all-powerful, We may invoke human laws and find vindication thru the instrumentalities of human institutions but the real, lasting power is somewhere else, and the true voice of command emanates from Him. Who is the Supreme Law-giver." LAUREL, JOSE P., MORAL AND POLITICAL ORIENTATION 13 (1949).

[133] *Id.*

[134] Laurel, Jose P., Inaugural Address delivered on October 14, 1943, p. 14.

[135] QUIRINO, THE PHILIPPINE IDEOLOGY 162 (1949).

> and juristic writings. As sound a philosophy of life and law can only restore us to a sense of true standards and values and a better understanding of judicial functions.[136]

Even under our not too perfect system, the aforesaid objective is not impossible of accomplishment. This can be gleaned from the following observation:[137]

> Despite such limitations, the functions of our law remains grand. It is to bring about and maintain those conditions which would give each man a chance to develop his best self, whatever this may be. Put a little more concretely, it is to enable the production of human beings who are able as well as free to lead fruitful and happy lives. For this purpose, it is obvious that more is required than what is usually called freedom. It is not enough that the citizen is secured from harm or that he is not unduly restrained. It is needful that he be afforded the requisite capacity or ability to make use of his opportunities. His faculties should be afforded full development. This means that he should be healthy, literate, able to enjoy leisure, in addition to being free from serious harm or undue restraint. It is the business of law to so channel the flow of life in our society, as to assure these things to the greatest number. So ordains the theory, which gives to our law both direction and light.

As for the guide for the attainment of this goal, Dr. Jose P. Laurel put it that "in fine, righteousness is the key to brotherhood among men and to lasting peace among nations." To Dr. Laurel's thinking, it is the moral guide and root principle for the individual whatever be his religion; it is the rock foundation of good government.[138] He had occasion to elaborate thus:[139]

> The individual lives not for himself and for his family alone. He lives in a community of fellow human beings each of whom has interests and problems, more or less identical with his; each of whom suffers, more or less from the same weakness that flesh is heir to, is prey to similar worries and fears, and preoccupations which make up the average lot of common humanity.
>
> Albeit, his neighbors possess also the same fund of generous impulses and sentiments as he has, are equipped with similar qualities of courage and piety, are moved, like him, by demonstrations of goodwill and kindness.

In his subsequent writings, Dr. Laurel pursued this idea further as follows:[140]

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[136] Coquia, Jorge R., *For a Revival of Natural Law Doctrine in Philippine Jurisprudence*, 76 L.J. 2,, 54 (1951).

[137] See *supra* note 1 at 1402-1403.

[138] See *supra* note 66 at 59.

[139] See *supra* note 74 at 58.

[140] See *supra* note 132 at 30-31.

> If righteousness is the guiding principle of individual morality, it must necessarily be the sole principle of social relationship and action . . . Individuals differ in temperaments, ideals and ideas, and, therefore, in thought and in action; conflicts of interests arises between them, especially where the same object of satisfaction is sought. Hence the necessity of certain rules of ethical behavior for the governance of the imperative and unavoidable relationship between man and man. These rules, whether self-imposed or dictated by some external authority in the form of laws customs, and traditions, must find their rationale in some guiding principle capable of being enunciated or formulated.

Significantly, Dr. Laurel stressed in no uncertain terms the obligation that goes with the right to live in a community. According to Dr. Laurel, community living imposes obligations and responsibilities upon the individual which he must gladly shoulder and that the larger interests of the group and of the nation that he must serve necessarily involve his own, and he would be recreant to the claims of those interests if he did not actively concern himself with the affairs of government. In this connection, Dr. Laurel underscored the fact that civic pride and civic conscience are engendered by habitual concern with the affairs of one's community and that they make for social responsibility, for close and affectionate attachment to one's locality, and are the beginning of genuine patriotism.[141] On the other hand, Dr. Laurel lamented thus:[142]

> Freedom abused is happiness forfeited. The very nature of freedom which is not looseness, laxity or promiscuity, but the self-regulated exercise of rights with the discharge of corresponding obligations is most sensitive to any form of abuse or violation. If man does not today enjoy the desirable well-regulated freedom, it is because the tendency is for society to concentrate more on rights, thus over-accentuating its importance while ignoring the imperativeness of obligations.

Dr. Laurel went further to enunciate on this subject in relation to the requisite for progress.

> Progress is impossible without individual and social discipline. Human effort is fruitless and mere dissipation of energy if it is not directed and controlled by an energetic will and the inflexible dictates of conscience. And it is discipline that strengthens the will and sharpens the eyes of reason. All organisms obey God-ordained laws of development and the universe itself will fall apart without that order which is "Heaven's first law."[143]

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[141] See *supra* note 74 at 58-59.
[142] See *supra* note 132 at 42-43.
[143] See *supra* note 74 at 55.

And what is self-discipline? Dr. Laurel defined and discussed it as follows:[144]

> Self-discipline means the strict governance of thought and action in harmony with the laws of Nature and the requirements of the good life. The impulses of the will, the incessant and shifting flow of thought, the swift, sudden promptings of desire are finely regulated into a harmonious order in a man of discipline. In the daily transactions of life, he is habitually restrained; he is considerate of the feelings, the rights and the well-being of others; respectful of the value of time, he is punctual in his engagements and obligations, he concentrates on the work at hand.

In the wake of the above objections and problems, there has come about a realization of a need for evolving a new type of citizen who would be ready and willing to subordinate himself to the large and more vital interests of the State.[145]

> . . . The Constitution guarantees to every man that *modicum* of personal liberty essential to his enjoyment of relative contentment and happiness. But of more transcendent importance than his privileges, are the duties which the individual owes to the State. The Constitution gives precedence to those obligations in consonance with the fundamental idea that man does not live for himself and his family alone but also for the State and humanity at large. The new citizen, therefore, is he who knows his rights as well as his duties, and knowing them, will discharge his duties even to the extent of sacrificing his rights.[146]

In addition to this, Dr. Laurel set the following guidelines for the new type of citizen:[147]

> It is not enough that a citizen take care that in his daily life he does not violate any of the many rules, regulations and ordinances of the State. He must also see to it that the laws are observed by the whole community, that the officers of the law attend to its enforcement and properly perform their duties. Passive inaction or tolerance is worse than actual and flagrant infringement of the law of the land, for in the latter case the law itself provides a remedy and administers a corrective to the erring individual. But the law is powerless to deal with that type of citizen who is so wanting in civic courage that he allows crime to be committed in his presence without even lifting a finger to prevent its execution, who is so lacking in civic pride that he tolerates the evils of vice and graft in the community, without doing anything to put a stop to them; who has such a distorted sense of civic values that so long as his selfish pursuits

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[144] *Id.*

[145] See *supra* note 134 at 9.

[146] *Id.*

[147] See *supra* note 139 at 25-26.

> are unmolested he does not give a thought to whatever happens to his neighbors or to the rest of his fellow citizens for that matter; and who does not care whether or not there is such a thing as "government" at all.

A leading Filipino advocate and educator discussed this subject with a tinge of hope, notwithstanding his awareness of the serious problems confronting the Philippine society. He said:[148]

> . . . Yes, our only chance are our educated young men and women who will spearhead a new force that will eradicate with a firm and strong hand corruption, graft — the equal of which our people have never seen — and various forms of venalities that have cast a shadow over our land; a nationalism, tempered with wisdom, that will revive our sense of moral values, our will to work, our fortitude to accept sacrifices for the country's good. We hope you will find your place in such a movement, and we hope that there, you will realize the fulfillment of your heritage not only as a "Filipino First" but as a "Filipino Always."

It is heartening to note that even during turbulent times, the Filipino thinkers have found their bearings, thereby making possible the proper chartering of their thoughts along the right course. One law professor has made the following realization:[149]

> It is really about time that with the growth of many law institutions in the Philippines, there must be achieved a properly integrated juristic objectives. One becomes aware, if he only stops to consider that the very diverse and conflicting theories or approaches to law now being in our law schools. It is submitted that there must be a more critical approach in order to promote constructive efforts to train good lawyers for our society and to achieve just laws. Law students taught to view laws in relation to the various schools of jurisprudence are more quick to realize the shortcomings or advantages of such laws. Thus if they are familiar with the sociological or realist school of law, they could see the necessity of passing laws to attain greater good of society, while a concurrent knowledge of the scholastic natural law should enable them to realize the need of a proper balance between the interests of society and those of the individual.

Writing much earlier, one of the elder Filipino statesmen said:[150]

> In carrying out these objectives one of the first lessons that the teachers should instill in their pupils is respect for and obedience to law. Obedience to the law is a necessary foundation upon which an orderly

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[148] See *supra* note 35 at 112.

[149] Coquia, Jorge R., *Juristic Objectives in the Philippine Law Schools*, 17 L.J. 566, 615, (1952).

[150] Osmeña, Sergio, *The Role of Teachers in Nation Building*, p. 4 (1937).

> society and a stable government must rest. If we are dissatisfied with the law we should seek its amendment or its abolition by lawful procedure. A country whose citizens have little or no respect for the law is a country that can not long exist.

Talking particularly of the fundamental law of the land, former Chief Justice Moran expressed the following view:[151]

> I regard the Constitution as a solemn compact whereby the majority of the people promise to the minority or to the individual, that in the exercise of political sovereignty, they shall not transgress certain well-defined boundaries or will follow specified rules of conduct. It is essentially the shield and the protection of the minority and of the individual citizen. And it is the product of the wisdom of the ages, because experience has shown that although Governments are vowedly intended to promote and preserve society and its components, they have exhibited irresistible tendencies to extend their powers expanding their authority to the detriment and prejudices of their constituents . . .

The president of the constitutional convention which framed and adopted the present Constitution of the Philippines had this to say:[152]

> And thus with your spirit of tolerance and moderation, and the talent, patriotism and good-will of all of you, my colleagues, to whom I am a confessed debtor of undying gratitude; and those who, in and out of this Assembly, in the majority or in the opposition, have demonstrated the exalted qualities of their hearts and minds, their great moral and intellectual solvency, on behalf of the people's cause and the people's most sacred interests — we have succeeded in investing the fundamental charter that will govern us in the approaching new regime with those attributes of strength and permanence, consecrating in its text those rights and interests of the people and the individual which call for particular protection and promotion, and preserving those immutable principles of liberty which all through the ages have been considered indispensable to the orderly functioning of any State for the happiness of its people.

Such interest of the individual as is sought to be protected under the Constitution received added meaning from the enunciation of the men behind the founding of the Commonwealth of the Philippines. One of the early Filipino statesmen and Vice-President of the Commonwealth Government when the latter was inaugurated in 1935 defined the legal position of the individual within the context of the regime thus:[153]

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[151] Moran, Manuel V., *Constitution Day Speech*, 15 L.J. 50 (1950).

[152] Recto, Claro M., *The Finished Constitution of the Philippines*, 3 L.J. 59, 61 (1935).

[153] Osmeña, Sergio, *The Security of the Individual — a Paramount Problem of Government*, p. 12 (1941).

> Outstanding among the policies of the Commonwealth intended to insure the well-being of the individual is the one that aims to redistribute our population by transfer from the over-crowded to the unoccupied or sparsely settled section of the country. The goal of this program is the building of a nation of small proprietors and homeowners, each one possessing a piece of land yielding products with which to satisfy his material wants, with a house erected on it, sufficiently attractive to give him that feeling of pride and contentment, of attachment and loyalty to his home and country which constituted the foundation of a nation's strength.

This position of the individual found further enunciation in the following words of Dr. Laurel:[154]

> The law is the safeguard, the custody of all private interest. Honors, lives, liberties and estates are all in the keeping of the keeping of the law. So that it can be established as dogma, the law, as we have repeatedly stated, must be supreme and sovereign. Without it, there can be no government; and without government, there can be no nation or state. There will only reign tyranny and anarchy, despotism and chaos.
>
> The very ideal of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury or whenever he is oppressed. To attain this ideal, there is no other alternative but that the State, in the performance of its sovereign and inherent power, must establish a "government of laws and not of man" — an agency where the law must of necessity and policy prevail over the whims of men.

VIII. LAW AND SOCIETY

In his "Observations on Justices Holmes' and Cardozo's Philosophy of Law,"[155] Jose F. Espinosa described law as "a system of legal control because it attempts to realize its mandates and objectives through socially binding measures promulgated by legal authority."

According to Dr. Laurel, "man, even if he should so desire, cannot detach himself from the divinity of his origin and the consequent moral order, nor from the reality of the cosmological system and the sociological imperative of his nature which requires government, law and order."[156] As a consequence, he postulated that "reverence for law as the expression of the common good is a fundamental condition of social life."[157] He further expostulated thus:[158]

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154 LAUREL, ASSERTIVE NATIONALISM 155 (1931).
155 22 PHIL. L.J. 87 (1947).
156 See *supra* note 90 at 4.
157 See *supre* note 74 at 25.
158 See *supra* note 66.

> If righteousness is the guiding principle of individual morality, it must necessarily be the sole principle of social relationship and action. This is because social morality is individual morality collectivized.

Describing the relationship between law and society in an introductory note to a book, De la Costa said:[159]

> Peace, says St. Augustine, is the tranquility of order. Order is the effect of law. Law directs the actions of individuals in society to the common good of society. It is therefore a kind of necessity, for it determines a multiplicity of human actions to one end, namely, the good of all.

Speaking on "The Role of Teachers in Nation Building," former President Sergio Osmeña pointed out that "obedience to the law is a necessary foundation upon which an orderly society and a stable government must rest."[160]

This point has been made clearer by Dr. Laurel when he stressed that "progress is impossible without individual and social discipline."[161] To this he added:[162]

> . . . Civic pride and civic conscience are engendered by habitual concern with the affairs of one's community; they make for social responsibility, for close and affectionate attachment to one's locality, and are the beginnings of genuine patriotism.

This is especially so because, as the same writer observed in the same work, "the individual lives not for himself and for his family alone" but "in a community of fellow human beings each of whom has interests and problems, more or less identical with his."[163]

In the face of this realization, as Dr. Bocobo noted, "more and more, judges and legislators all over the world are striving for what is called 'the socialization of the law' " and "the breath of the new life of society must be breathed into the traditional concepts of the law."[164] This also goes hand in hand with the recognized problem "of how the law may at the same time be administered and made to grow and adapt itself to the realities of life."[165]

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[159] See *supra* note 65.
[160] See *supra* note 150.
[161] See *supra* note 157 at 55.
[162] *Id.* at 58-59.
[163] *Id.* at 58.
[164] See *supra* note 68 at 142.
[165] See *supra* note 60 at 2. Also see *supra* note 106.

More on the social justice side, former President Quezon made the following observation:[166]

> We are living in an age in which civilized society can only endure if justice is equally accorded to the rich and poor. Those who have can hope to keep what they have if they share it with those working for them.

Former President Macapagal put it thus:[167]

> Our courts have been established not only to administer justice in the solitary realm of the judiciary detached from the other spheres of government and society. They constitute an implement of the Republic charged with the mission of placing within the reach of our people one of the three great fundamental ideals of justice, liberty and democracy which together foster the general welfare of the people. Although independent, the judiciary is not therefore detached from the stresses that move the Nation as it seeks the general welfare and must play a proper part in the husbanding and control of the current national forces in order to divert them to the attainment of the national good.

In line, with this, Dr. Coquia noted that "one becomes aware, if he only stops to consider that the very diverse and conflicting theories or approaches to law now being taught in our law school."[168] He therefore proposed that "there must be a more critical approach in order to promote constructive efforts to train good lawyers for our society and to achieve just laws."[169]

Lately, one writer made the following comment on the role of law in our social life:[170]

> Still, we should not underestimate what our law has done by way of increasing opportunity for human achievement and happiness. It has swept away the invidious distinctions of sex and privileges; it has put human dignity on firmer ground; it has spread benefits in the form of education, health and leisure; it has enabled our working masses to get a more equitable share of the fruits of their labors; and it has protected them from exploitation and harsh working conditions. The ultimate object of our schemes of taxation and programs of social amelioration, as carried out in our law, is more equitable distribution of income, such that every citizen shall enjoy the wherewithal as make his experience rich and varied and his life meaningful. The movement has been slow, but the resulting gain is real. In terms of opportunity to achieve, the past sixty years brought us progress and well may we say, indeed, that liberty as we know it is the gift of our law.

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166 See *supra* note 96 at 86-87.
167 See *supra* note 126 at 255.
168 See *supra* note 149.
169 *Id.*
170 See *supra* note 1 at 1411.

IX. LAW AND GOVERNMENT

As aptly stated by Dr. Laurel, law must be supreme and sovereign because without it, there can be no government and without government, there can be no nation or state. There will only reign tyranny and anarchy, despotism and chaos.[171]

> A well established principle of modern government is that the law is the ruler. Whatever the law commands you are to do whatever the law commands the executive, he is to do. Whatever the law authorizes to be decided, the judiciary, or some other tribunal fixed by it, is to decide. Those are the three important ways where the law is the supreme and indisputable master of its subjects. So, in the last analysis, we can never really conceive the thought that man shall be over the law.[172]

In another work, Dr. Laurel further explained his points as follows:[173]

> The foundation stone of all governments is law and order. Without them it would be impossible to promote education, improve the condition of the masses, protect the poor and ignorant against exploitation, and otherwise insure the enjoyment of life, liberty and property. And the burden of effective law enforcement falls no less upon the citizen than upon the government. For, unless the citizen is imbued with an intelligent concept of the supremacy of the law, no government, but the most despotic and tyrannical, can be expected to preserve and maintain even the semblance of a well-ordered society.

Manuel L. Quezon realized that "laws do not make a government democratic or autocratic or have autocratic laws and have a democratic government."[174]

According to Elpidio Quirino, "the objective of all enlightened government is the promotion of the greatest good for the greatest number."[175] He further stated:[176]

> Governments and institutions today exist for the welfare of all the people, especially the underprivileged, the downtrodden, so-called, who have had little or no share of the good things of life.

A more elaborate exposition on the subject has been made by Dr. Laurel, to wit:[177]

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[171] See *supra* note 154.
[172] See *supra* note 154 at 153.
[173] See *supra* note 74 at 25.
[174] See *supra* note 96 at 9.
[175] See *supra* note 135 at 25.
[176] *Id.* at 177.
[177] See *supra* note 94 at 23-24.

> Popular government is a magnificent three-story building: the basic foundation is the people; the first story is the constitution which is the expression of their sovereignty; the second is the officialdom or the group of constitutional caretakers of the edifice; and in the third and highest story is found the altar wherein zealously kept and guarded the mystic fire which symbolizes the faith of the people. Collapse of the foundation means destruction of the entire building; collapse of the first story is necessarily the collapse of the second and third stories and the consequent reversion to the architectonic wisdom of the people; collapse of the second story — officialdom — because of misdeeds or disloyalty, is the demolition of the faith of the people; without faith, no popular government can ever hope to live and survive.

Manuel L. Quezon discussed the relationship of law and popular will in a democratic government in an inaugural address thus:[178]

> Reverence for law as the expression of the popular will is the starting point in a democracy. The maintenance of peace and public order is the joint obligation of the government and the citizen. I have an abiding faith in the good sense of the people and in their respect for law and the constituted authority. Widespread public disorder and lawlessness may cause the downfall of constitutional government and lead to American intervention. Even after independence, if we should prove ourselves incapable of protecting life, liberty and property of nationals and foreigners, we shall be exposed to the danger of intervention by foreign powers. No one need have any misgivings as to the attitude of the Government toward lawless individuals or subversive movements. They shall be dealt with firmly. Sufficient armed forces will be maintained at all times to quell and suppress any rebellion against the authority of this Government or the sovereignty of the United States.

He further expostulated as follows:[179]

> We know the American people; we are familiar with their traditions, their history and the principles which give life to their body politic. We should not heed the statements made by those who affirm that what has been done by a Democratic Congress can be easily undone by a Republican Congress, and that, consequently, the present Congress has the right to repeal the Jones Law.
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> Laws which are purely domestic in character may be amended or repealed at will by the lawmaker, but those which affect other peoples and lay down an established policy and grant certain rights and liberties which the nation affected accepts, cannot be repealed without the consent of the latter, except by despotic governments devoid of all sense of justice and humanity.

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[178] Quezon, Manuel L., *Inaugural Address*, 3 L.J. 606 (1935).

[179] QUEZON'S ADDRESSES 99 (1924).

In a more theoretical manner, Dr. Laurel discussed the same subject thus:[180]

> A law, which is promulgated and made solely by one man, may also be abolished or unmade by the sole power which created it. It is obvious and clear, therefore, that in this case the law is subservient to the man, so that a government of one man and not of law is perforce established under the circumstances. But if the law is promulgated and created by many persons, as by representatives of the people, then no man is governed by another; but they are all governed by that instrumentality which they created, that common interest and common understanding which they promulgated as the standard and rule of conduct which gauge the actions of men, and are, therefore, supreme and sovereign.

Writing on "Unions and the Working-Man," Jose S. Bautista said:[181]

> I made mention of democracy. What is democracy? The Filipino people established this Government to achieve peace and order, because without a government there can be no peace and order; because the objective of the government is justice, but there can be no Justice when there is no liberty, and there can be no liberty without protection. The government may give the working man all the rights, but if they are weak, without freedom and are under subjugation, of what use are those rights? That is what I meant when I said: the end of our courts is justice, and there is no justice when there is no liberty, and there is no liberty without protection.

Further on the function of government, more specifically as it is related to law, Dr. Laurel made the following observation:[182]

> It is very apparent from these decisions that no government ought to affirm that it exists for the purpose of checking or choking the vested individual rights of its citizens; rather, that government should make it plain and clear that the laws are supreme and sovereign over the individual or any set of individuals, however, powerful he or they may be. Law can no more exist without government, in one form or another, than man can endure without law. While it is admitted that law and man are indispensable in a legally established government, it must also be admitted that the law must prevail over man, if a government of laws and not of men should be the final objective.

In consonance with the above view, Dr. Laurel expressed the following idea about a public office:[183]

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[180] See *supra* note 154 at 149-150.

[181] 22 L.J. 396, 430 (1957).

[182] See *supra* note 154 at 152.

[183] See *supra* note 74 at 26.

> Public office is a public trust. The beneficiaries of an established government are the people and the people only. The promotion of common good is the guiding principle of all governmental activities. The holding of a public office is not an occasion for personal aggrandizement but an opportunity for public service.

With the same vein, Manuel A. Roxas, in a message to Congress entitled "The Nation on the Road to Prosperity," delivered on January 26, 1948, said:[184]

> . . . If we should work together now as we did in the past, I assure you we shall move forward at a good pace without having to change our democratic ways, without renouncing the liberties that we cherish, ever closer to the high planes of prosperity, well-being, and social justice that we have always sought for our people.

Recognizing the real sanction of government, Dr. Laurel expressed the thinking that "in the ultimate analysis, all government is physical power and that government is doomed which is impotent to suppress anarchy and terrorism."[185]

Confessing the necessity to use governmental power to maintain peace and order and to preserve the democratic institution, Manuel A. Roxas likewise chose the path toward this goal within the fabric of the rule of law. In an inaugural address delivered on May 28, 1946, he said:[186]

> In some few provinces of our land the rule of law and order has yielded to the rule of force and terror. Using economic injustice as a rallying cry, demagogues have destroyed the precious fabric of public faith in democratic procedure. The faith of the people in the government and in law must be restored. I pledge myself to rectify injustice, but I likewise pledge myself to restore the rule of law and government as the arbiter of right among the people.
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> . . .
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> This great humanitarian (Lincoln) could not be accused of placing the values of law above human values. He recognized as do all right-minded men that if government has one function, it is to insure the reign of law for the protection of the weak in their inalienable rights — the right to life, liberty and the pursuit of happiness. This Government is pledged to maintain the rights of the underprivileged with all its strength and all its power. It will see justice done to the poor, the lowly and the disinherited. But it will not sanction, it will not permit, it will oppose

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184 See *supra* note 76 at 604.

185 See *supra* note 134 at 4.

186 Important Speeches, Messages and Other Pronouncements of President Manuel Roxas, pp. 40-41 (1947).

> with every force at its command if necessary the imposition of extra-legal rule over any section of this country by any group of self-appointed leaders or individuals. The show of arms and terror will not daunt us. Defiance will not obtain from us a single additional iota of justice. Justice is absolute and is not to be measured by strength of contention.

Former Chief Justice Manuel V. Moran stressed the role of the Constitution as the limitation of the exercise of governmental powers, especially in relation to the rights of the minority, to wit:[187]

> I regard the Constitution as a solemn compact whereby the majority of the people promise to the minority or to the individual, that in the exercise of political sovereignty, they shall not transgress certain well-defined boundaries or will follow specified rules of conduct. It is essentially the shield and the protection of the minority and of the individual citizen. And it is the product of the wisdom of the ages, because experience has shown that although Governments are avowedly intended to promote and preserve society and its components, they have exhibited irresistible tendencies to extend their powers expanding their authority to the detriment and prejudice of their constituents . . .

Along the same line of thought, Dr. Laurel said:[188]

> It was the high hope of the constitutional convention that, by clothing the Executive with powers even greater than those granted by the U.S. Constitution to the American President, efficiency and dispatch would characterize the enforcement and execution of our laws and constitutional mandates; we had believed that an efficient and vigorous enforcement of the laws would be the most striking demonstration of our capacity to govern ourselves as an indepedent people, as well as the most convincing evidence that we could give to our citizenry of the superiority of a rule of laws and not of men . . .
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> The efficiency of the government is gauged not so much by the number or novelty of the laws contained in its statute books, but rather by the manner in which laws are carried out and order thus preserved . . .
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> Given a good constitution and good laws — all that would have been necessary was their effective enforcement on the part of the Executive Power and its agencies and willing and cheerful compliance with them on the part of the citizens, together with their fair and impartial interpretation on the part of the judiciary, whenever there was any point in dispute and, then, we would have had satisfactory conditions of peace and order.

Dr. Laurel proceeded to elucidate his point in another work thus:[189]

> The law is the boundary, the measure between the government's pre-

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[187] See *supra* note 151.
[188] See *supra* note 90 at 27.
[189] See *supra* note 172 at 195. Also see *supra* note 81.

> rogative and the people's liberty; while these move in their own orbs, they are a support and a security to one another — the prerogative a cover and defence to the liberty of the people, and the people by their liberty are enabled to be a foundation to the prerogative. But if these bounds are so removed that they enter into contention and conflict, one of these mischiefs must ensue; if the prerogative of the government overwhelms the liberty of the people, it will be turned into tyranny; if liberty undermines the prerogative, it will grow into anarchy.

In his unflagging efforts to promote social justice and to ameliorate the social conditions among the masses, President Quezon clearly recognized that, within the realm of government action, said objectives should be attained within the limits of the laws of the land.[190]

X. LAW AND CHANGE

One view pointed out earlier is to the effect that law is primarily custom and morality codified, and is also public policy expressed, and that as custom, morality and public policy change with the change of the times, so does law.[191] Also stated earlier is that "law today is no longer the eternal, immutable truth of the Natural School, nor the spirit of the people, but is the product of infinite forces variable with time and place."[192] The reason for all this may be gleaned from the following:[193]

> The law (ley) being the work of a man or group of men of an epoch is necessarily deficient and unable to provide rules and formulas to apply to all conceivable cases and to govern for all time. Life, too rich and ever changing, refuses to be shackled to a Procrustean bed. Law is the laggard behind custom and the latter forms and manifests itself very slowly.

Moreover, as President Elpidio Quirino put it, this is an age of universal readjustment and other peoples of the world today are revising and strengthening their way of life.[194]

A more profound reason comes from the pen of Dr. Laurel thus:[195]

> Every generation has longed and labored for greater and more abundant life in its never-ending search for truth, yearning for that which is absolute but contenting itself in the end with truth that is approximate and relative. And in this eternal quest, Lessing consoled himself with

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190 Quezon, Manuel L., *Spiritual Regeneration of the Filipino*, (1938).
191 See *supra* note 57.
192 See *supra* note 60. Also see *supra* note 107.
193 *Id.* at 1.
194 See *supra* note 135.
195 See *supra* note 79.

> the thought that were he to be offered to select between knowledge of all truth and the impulse to seek the truth, he would reverently select the second as a greater boon than the first in an effort to develop justice in thought and the love of mental adventure. And so, deep beneath the surface of any legal system we find varying relative concepts of law as an expression of changing mores of the times and as a jural limitation upon power and as an instrument for the attainment of the regulated liberty and limited freedom of thought and action.

Quintin Paredes subscribes to the "theory that juristic thought of a country invariably embodies the passing and shifting problems of its generations, and the law, therefore, becomes the repository of a people's growth and fulfillment."[196] To his thinking, "the legal aphorisms and doctrines found useful today, though they may be discarded tomorrow, may nevertheless be signposts along the legal highway, giving us sense of direction and incentive in the solution of our social, political and economic problems."[197] He further stated that "the law is an ever-changing coefficient of our social life."[198]

In stressing the need to study also dissenting opinions, Marcial P. Lichauco said:[199]

> . . . Sometimes also dissenting opinions are more stimulating and thought provoking than the opinions of the majority. The student in such cases is advised not to ignore this minority voice. He should know not only what the law is now but what it may be in the future. For the law is a progressive science. It is ever changing. What may be an accepted dogma today may have to be repudiated tomorrow in the interests of progress.

In connection with his belief that "no legal system has ever remained stationary,"[200] Dr. Laurel went to fundamentals as follows:[201]

> We cannot escape from the early biological teaching that many forms of life began from the protoplasmic to the more complex and higher and more efficient forms, and that, sociologically, human society has emerged from a state of barbarism to higher degrees of compactness and organization. Therefore, development there must be in the course of which we may either abandon or return to older principles with or without ellipsis

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196 See *supra* note 69.
197 *Id.*
198 *See supra* note 59.
199 See *supra* note 69.
200 See *supra* note 40.
201 LAUREL, OBSERVATIONS ON THE PROPOSED CONSTITUTIONAL AMENDMENTS 9 (1946).

> of any intermediate process. Whether considered as a grant of, or a limitation upon power, or whether considered, in a broader sense, as a definition of jural relations between the government and its people and the powers which it wields, a constitution is, in the nature of things, a growth and a development.

He elaborated thus:[202]

> Human law is both a growth and a development. Whether we consider it as the product of spontaneous growth amidst particular environment or as a result of the conscious evolution of man's moral and intellectual forces, it must, at appropriate intervals, be renovated, or man will renovate it just the same. The natural explanation for this is, that as man cannot remain stationary, and the laws made by him cannot be unyielding and lag behind the demands of his daily life. It is of the essence of life in this world that it does not and cannot remain static . . .

A call has been sounded in this direction inasmuch as the law must be administered and made to grow and adapt itself to the realities of life.[203] This is especially so because "changing socio-economic conditions demand modification of the rules governing society, and such modification is being sought and implemented primarily through legislation."[204]

> Both individual and community actions and activities should be based upon the socio-legal values because it seems to be that only when they are so based that the legal ordering moves on smoothly. The clear call of the times is for a reorientation of approach to the complex problems of legal ordering on the basis of socio-legal values. Thus, policy planners and policy makers as well as government functionaries must align their thinking and actions to the creation and/or preservation, promotion and equitable distribution of the fundamental socio-legal values. The determining consideration should always take into account whether a given act or process is in fact consistent with or implementary of the socio-legal values. This may as well be the only consideration that really matters. While there are many variables that affect the actions and decisions of policy planners, policy makers and government officials, the governing rule or principle ought to be the consideration and implementation of the socio-legal values. This acquires cogency in the present struggle for survival of free democratic society. At no time has it been placed in a more severe test than now.[205]

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[202] Laurel, Jose P., "Inconstancy of Law." 21 PHIL. L.J. 86 (1941).

See *supra* note 45; also *supra* note 46 and *supra* note 163.

[203] See *supra* note 165.

[204] Bernal, Eriberto M., *The Legislative Process,* 27 PHIL. L.J. 497 (1952).

"Because of the wise, though belated, realization that laws cannot remain impervious to social and economic demands, a revised Civil Code is now under consideration by the Congress of the Philippines." — Salonga, Jovito R., *Conflict of Philippine Law Rules: A Brief Comparative Study and a Suggested Approach,* 13 L.J. 409 (1948).

In this connection it may be noted that said Civil Code has already been enacted into law as Republic Act No. 386.

[205] See *supra* note 56 at 464-465.

XI. CONCLUSION

A serious consideration of the views expressed by Filipino thinkers and writers, more particularly their notions on law and justice, reveals at least three significant points.

Firstly, as has been said individually of Dr. Jose P. Laurel, no single or group of Filipino thinkers have evolved any new system of legal thought in the sense of what Austin and Kelsen, to mention only two, did during their time. Their writings do not indicate the emergence of any system or any attempt at establishing any school of jurisprudence. Of course, this does not detract from the fact that the legal rules in this jurisdiction "hang well together enough, not with mathematical consistency, it is true, but sufficiently to be unified into a system,"[206] despite their "divergence as to antiquity as well as to antecedents."[207] This notwithstanding, it may be said that there is such a body of principles or concepts underlying Philippine law as a branch of knowledge or discipline as may be conveniently referred to as the "Philippine legal philosophy".

Secondly, there is an almost unanimous cry for evolving a legal system in the Philippines within the context of Filipino culture and traditions as expressed by illustrious Filipino scholars.[208] Dean Abad Santos aptly put it thus:[209]

> Our legal system can stand further improvement. I refer particularly to anchoring our laws to our traditions and cultural heritage. As it is the bulk of our law is alien. There is sitll in us a colonial mentality which makes us unduly lean on foreign law. We have our own good legs but we still insist in using imported crutches. We must dig into our own history so that we can attain a unique identity. This task of scholarship can be incident to the study in the College of Law.

Thirdly, there is an awareness among Filipino thinkers as to the need for finding a middle ground between the common law approach and the civil law or positivistic approach. In this connection, it may be recalled that the Philippines is fortunate enough to be exposed to the influence of both the Common Law and the Civil Law. But it should be borne in mind that there is still a necessity for reconciling or harmonizing both influences to the end that the Philippine legal system may

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[206] See *supra* note 4 at 737.
[207] See *supra* note 1 at 1397.
[208] See *supra* notes 11 and 12.
[209] Abad Santos, Vicente, *Dean's Golden Jubilee Message*, 35 PHIL. L.J. 1253 (1960).

be able to adopt the desirable features of both systems. It should also be considered that there is a realization on the part of the majority, if not all, of the Filipino thinkers that the needs of Philippine society can be satisfied neither by a strict legalism as dictated by the civil law or positivistic approach nor by the purely common law or sociological approach. The element of stability afforded by the civil law or positivistic approach should be complimented by the "socialization of the law" as may be made possible by the common law or sociological approach. The forging of these virtues into a harmonious whole may yet give rise to a system of law in this country which assures stability to all interests in the community and at the same time possesses adaptability so indispensable in meeting the ever-changing demands of modern society. When this goal is achieved, then can the Filipinos say with pride that they heeded the warning of the late President Quirino, to wit:[210]

> **We should not mistake, however, the attainment of the material good things of life for the ultimate answer to the yearning for peace for goodness and beauty, or for lasting individual and social happiness.**

While the task of realizing the above objectives equally falls on the shoulders of judges, legal practitioners and law teachers, the future development of Philippine law mainly depends upon the moulders of the legal minds of the country. Indeed, the need for revitalizing Philippine legal education cannot be over-emphasized if the Filipinos are to keep faith with their national aspiration and ideal as a people. Moreover, if the Filipino people are to live happily as members of a legal community or order, they should be governed by a system of law based on their culture and traditions, and not on principles and concepts alien to their character, temperament and idiosyncrasies.

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[210] See *supra* note 135 at 165.